QUOD DEUS TER OPTIMUS MAXIMUS JUSTITIÆ ET JURIS AUTOR AC VINDEX PRIMUS ET SUMMUS FAUSTUM FORTUNATUMQUE ESSE JUBEAT.

Diſputationis Solennis De CENSIBVS THEMATA

Iuſſu & Decreto Graviſſimi ICtum Ordinis in celeberrimâ Academiâ Wittebergenſi

SUB PRÆSIDIO

Viri Magnifici, Ampliſſimi & Conſultiſſimi

Dn. LUCÆ BECKMANNI

J. U. D. & Prof. Publ. Sereniſsimi Saxoniæ &c. Ducis Electoris, pluriumq; Principum Conſiliarij, Regij Dicaſterij Luſatiæ inferioris, & Electoralis Saxonici, necnon Conſiſtorij Wittebergenſis Aſſeſſoris meritiſſimi &c.

Pro obtinendo in utroq; Iure Doctoratus gradu

Publicè diſcutienda proponit & defendet

JOHANNES STRAUCHIUS WITTEBERGENSIS

Ad diem 22. Maij.
Horis matutinis & pomeridianis.
In Auditorio Majori.

...EBERGÆ, Typis JOHANNIS MATTHÆI...

Cum Deo.

Theſis I.

CENSVS vocabulum πολύσημον eſt.

ACcipitur enim hæc vox, à verbo CENSERE (quod variæ quoque eſt ſignificationis) deducta I. pro patrimonij, ſeu facultatum & bonorum æſtimatione, ſecundum quam tributa imponebantur & pendebantur. *Zaſ. lib. 2. ſingul. c.* [illegible] Hinc [illegible] *b. e. ex cenſu tributa conferre*, apud Cicer. *ad* [illegible] [illegible] Inde *Cenſores* ab agendo populi cenſu dicti *Liv.* [illegible] *lib.* [illegible] quod rem [illegible] quisque tanti æſtimare ſolitus ſit, quantum [illegible] cenſuerint. S. Pomp. Feſt. *de V. S.* Qui & *Cenſitores l. forma 4. §.* [illegible] [illegible] *C. de cenſ. & cenſitoribus & peræquatorib. & inſpecto-* [illegible] Diſcrimen inter iſtos omnes, ut & *Exactores*, *Superexactores*, *Opinatores* & *Optiones*, pertractat P. Buſ. *lib. 3. ſubtil. c. 3.* De [illegible]torum officio latiſſime agunt poſt alios *Cujac. ad l. 2. §. poſt* [illegible] *17 D. de O. J. ibidemq́;* Vent. Cæc. [illegible] *lib. 2. excurſ. 4.* [illegible] Greg. [illegible] Henr. Salmuth *ad Guid. Pancir. memor.* [illegible] *cap. de tab. cap.* [illegible] *pag. 516.* In iſta prima ſignificatione CENSVS vox uſurpatur in *l. lucio 27. §. final. D. de ann.* [illegible] *l. qua quisq; 64. D. de A. R. D. l. vetus 2. d. l. forma 4. D. de cenſib. l.* [illegible] *2. C. de cenſib.* II. Invenitur & *Cenſus* uſurpatus pro ipſis [illegible] & facultatibus, quæ æſtimabantur & cenſebantur [illegible] *æſtimatio cenſus.* Cicer. *in Paradox.* *Dat cenſus honores.* Ovid. [illegible] *3. Amor. eleg. 7.* *Partus per vulnera cenſus.* Ovid. *d. eleg. 7.* [illegible] [illegible] Ovid. [illegible] *Metamorph.* i. e. ab ligurire bona. Et ſic [illegible] videtur in *l. cogi 16. in pr. D. ad SC. Trebell. l. de creationib. 27.* [illegible] *fin. C. de Epiſc. audient.* Weſenb. *in paratit. D. de Cenſ. n. 1.* III. Pro [illegible]ſonarum deſcriptione, quando tributum ſecundum capita [illegible] ponendum. *l. ætatem 3. in pr. D. de cenſib. l. rerum* [illegible] *10. C. de* [illegible] [illegible] *C. de colon. Thracenſ. lib. 11.* Erat enim duplex

 deſcri-

CUM DEO.

Theſis I.

CENSVS vocabulum πολύσημον *eſt.*

ACcipitur enim hæc vox, à verbo CENSERE quod variæ quoque eſt ſignificationis, deducta I. pro patrimonii, ſeu facultatum & bonorum [illegible] æſtimatione, ſecundum quam tributa imponebantur & pendebantur. *Zaſ. lib. 2. Intell. ſingular.* [illegible] *quæ cenſu tributa conferri* apud Cicer. *in 4. Verr.* Inde *Cenſores* ab agendo populi cenſu dicti *Liv. d. lib. 4.* quod rem [illegible] quisque tanti æſtimare ſolitus ſit, quantum [illegible] *S. Pomp. Feſt. de V. S.* Qui & *Cenſitores l. forma 4. §. 1. D.* [illegible] *C. de* [illegible] *& cenſitoribus & peræquatoribus & inſpectoribus.* [illegible] inter iſtos omnes, ut & *Exactores, Superexactores, Optiones & Optionis,* pertractat *P. Buſſ. lib. 3. ſubtil. c. 3.* De Cenſorum [illegible] latiſſime agunt poſt alios *Coraſ. ad l. 2. §. poſt deinde 17. D. de O.* [illegible] *Ven. Cæ.* [illegible] *lib. 2. excurſ. 4.* [illegible] Henr. Salmuth *ad Guid.* [illegible] *memor. lib. 1. cap. de* [illegible] *pag. 516.* In iſta prima ſignificatione CENSVS vox uſurpatur in *l. liberto 21. §. final. D. de ann. legat. l. quæ* [illegible] *64. D. de A. R. D. l. vetita 2. d. l. forma 4. D. de cenſib. l.* [illegible] *2. C. de cenſib.* II. Invenitur & *Cenſus* uſurpatus pro ipſis fortunis & facultatibus, quæ æſtimabantur & cenſebantur. [illegible] Cicer. *in paradox. Dat cenſus honores.* Ovid. [illegible] *3. Amor. eleg. 7. Partus per vulnera cenſus.* Ovid. *d. eleg. 7.* [illegible] Ovid. [illegible] *Metamorph.* i. e. abligurire bona. Et ſic poni videtur in *l.* [illegible] *16. in pr. D. ad SC. Trebell. l. de creatione 27.* [illegible] *C. de Epiſc. audient.* Weſenb. *in paratit. D. de Cenſ.* [illegible] III. Pro perſonarum deſcriptione, quando tributum ſecundum ea [illegible] imponendum [illegible] *in pr. D. de cenſib.* [illegible] *C. de colon. Thracenſ. lib. 11.* Erat enim duplex

[illegible] ſeu imperantis, quæ & [illegible] & perſonarum ſeu capitum, quæ capitatio [illegible] de agric. & cenſ. d. l. 1. C. de colon. [illegible] Benedict. Bon. [illegible] n. 10. & ſeq. Hinc capitecenſi, [illegible] Frid. [illegible] n. 1. Vid. & Gail. lib. 2. obſerv. 52. n. 2. IV. Pro ipſo [illegible], quod imponitur & penditur. Unde Vall. [illegible] Cenſus [illegible] Principi per capita ſolvitur, ſive per [illegible] &c. Sic Matth. 22. [illegible] ἐξεστι δοῦναι κῆνσον Καίσαρι. [illegible] qua ſignificatione [illegible], publica perpenſatio, publica functio [illegible] publ. penſit. 1. C. de annon. & tribut. lib. 10. [illegible] de [illegible] compertis 6. C. de præſcript. 30. vel 40. ann. [illegible] eandem potiſſimum accipi in d. l. 1. D. de [illegible] 1. C. Sine cenſu vel reliq. volunt Dd. Quamvis [illegible] & hæc non ſemper diſtingui videantur. [illegible] ea, qua uſurpatur in Jure Canon. ſub tit. [illegible] & Extravag. comm. de cenſib. pro penſione, quæ de [illegible] Eccleſiæ alicui in argumentum ſubjectionis [illegible] Barth. Carthagen. in parat. jur. Can. ad d. t. [illegible] de cenſib. [illegible] in [illegible] Pontif. ad d. t. [illegible] de cenſib. [illegible] Pro, quo cenſum præſtare tenentur, [illegible] D. de [illegible] volunt Fellician. de Sol. de cenſib. in præamb. n. 3. Frid. Martin. [illegible] n. 11. & Dd. commu. A quibus non abſque ratione [illegible] dere Car. Molin. in conſuetud. Pariſ. [illegible] & Arn. de Vall. [illegible] jur. emphyt. quæſt. 32. n. 5. V. Pro tabulis ſive [illegible] cenſus [illegible] ibidemq; Gothofr. D. de prædiat. [illegible] qui aliàs [illegible] Aſtimum & Regiſtrum, [illegible] Germanicè Saalbuch à Sala [illegible] Ital. Cataſtrum appellant [illegible] non [illegible] polit. [illegible] Et hæ ſignificationes [illegible] ſpectant ad publicum cenſum. VI. [illegible] facultate [illegible] [illegible] eſt. Et ſic vocabulum [illegible] & hoc vocabulum aliàs variè uſurpatum [illegible] Vid. Casp. Koling. de ann. & menſ. reditib. [illegible] VII. Pro [illegible] tractu quodam, per quem bonum [illegible] [illegible] & ſeqq. in pr. [illegible] de cenſib. [illegible]

[illegible] quæ inde præſtatur *c. conſtitutus 6. extr. de* [illegible] *n. 1. & 2. de Emt. & Vend.* Et ſic etiam [illegible] dicitur. Lud. Molin *de contract.* [illegible] *3. n. 2.* Vid. [illegible] *& seqq.* Felician. de Sol. *in d. proœm. n. 3. & ſeqq.* Frid. [illegible] *& ſeqq.* Petr. Soller. *in prax. cenſual. cap. cenſus. pag.* [illegible] Dominic. de Sot. *lib. 6. de J. & J. quæſt. 5.* [illegible] Covarruv. *lib.* [illegible] *var. reſol. c.* [illegible] *& ſeqq.*

II. *Hic* Cenſus *potiſſimùm accipitur pro facultate privatâ capiendi præſtationem aliunde.* [illegible] *quòd ſit jus privatum percipiendi certas & utiles penſiones de re penitùs alienâ,* [illegible] *aut à perſonâ.*

[illegible] proinde hoc in loco ut plurimùm in ſignificatione [illegible]. In qua ita ferè definitur à Conr. Summerh *de* [illegible] Jacob. Menoch. *lib. 3. præſumt. 207. n. 3.* Domin. de Sot. [illegible] Frid. Martin. *de jur. cenſ. d. c. 1. n. 24* Genus eſt *Jus,* [illegible] cenſus inter res corporales non poteſt referri, ſed pertinet ad incorporales, quamvis ipſa præſtatio ſeu penſio & ſolutio [illegible] in re corporali fiat. Hinc cenſum emens non ipſam penſionem, neque fructus vel pecuniam, ſed jus potiùs & facultatem [illegible] ſibi rem utilem mercatur. Summerh. *d. q. 72.* ubi [illegible] cenſus formaliter ſumtum jus denotare, materialiter rem, quæ jure hoc ſolvitur. Vid. & Barth. Chaſſan. [illegible] Petr. Binsfeld. *ad c. in civitate 6. extr. de* [illegible]. Eſt autem generi determinatio adjecta, quòd ſit jus privatum, non publicum, è cauſâ privatâ originem trahens, & [illegible] privatos frequens. Ac quamvis etiam publicæ perſonæ [illegible] habere poſſint, habent tamen id non ut publicæ, quemadmodum [illegible] publico gaudent, ſed ut privatæ. Proinde iis [illegible] aliquid ſingulare præ privatis non competit. Cætera [illegible] loco differentiæ in definitione poſita deſignant, quale [illegible] jus, ſeu in quo conſiſtat: in *perceptione* videlicet [illegible] ſive annuarum ſive menſtruarum &c. [illegible] *in re utili,* ut [illegible] frumento, vino, oleo, ligno, animalibus, pecuniâ & *è re* [illegible], in qua nullum habemus dominium,

um, licèt forſan anteà habuerimus, ut ratione cenſus reſervativi, quemadmodum infrà *th.* 12. dicetur: vel etiam à [illegible] berque in utraque & ſeparatim & conjunctim locum.

III. Unde liquet, Cenſum plurimum differre à Mutuo.

Ex vi Mutui ſiquidem nullum competit jus percipiendi penſionem de re mutuo datâ. Eſt enim ſuâ natura, utpote ex amicitiâ & familiaritate profectum, gratuitum, unde ex eo amplius obligatio concipi nequit *l. ſi tibi.17. in pr. D. de pact. l. [illegible] 11. §. 1. D. de reb. credit. l. cum ultra. 5. C. de non num. pecun. c. 1. & [illegible] cauſ. 14. q. 3. & ſimilib* Gœdd. *de contrah. & comm ſtipula* [illegible] *2. & ſeqq.* Petr. Gregor. *lib. 22. ſynt. agni. d. 2. n. 1.* Happr. *ad pr.* [illegible] *re contrah. oblig. n. 68. & 88.* In Mutuo ſemper requiritur, [illegible] ſors ſit dantis, & fiat accipientis; non tamen ſimpliciter & abſque omni conditione, ſed accipiens obligatur ad reddendum idem genus *l. 2. in pr. D. de reb. credit.* ſeu tantundem in genere, vel ſpecie, ut Philoſophi loquuntur. Gothofr. *ibid.* ejuſdem naturæ & qualitatis. *pr. J. quib. mod. re contrah. oblig.* ſeu bonitatis *l. 3. in fin. D. de reb. credit.* Donell *ad d. l. 2. D. de reb. cred. & lib.* [illegible] 1. & adeò præciſè, ut nullo interitu liberetur *d. l. 2. in pr. D.* [illegible] *cred.* Felic. de Sol. *lib. 1. c. 4. n. 14.* Ac uſuræ quando adjiciuntur, debentur, non vi mutui, cum naturæ mutui contrariæ ſint, ſed ſtipulationis *l. eidemq; 10. §. ſi quis Titio 4. D. Mandat. l. Titius 24. D. de præſcript. verb. l. quamvis 3. C. de uſur.* Et rarò è pactis nudis mutuo adjectis debentur, ac non niſi ob inſignem rationem *l.* [illegible] *34. D. de uſur. l. periculi. 5. in fin. D. de naut. fœn. l. frumenti 12. l. ole* [illegible] *C. de uſur. Nov. 163. c. 4.* Paul. *lib. 2. ſentent. t. 14. in pr.* Gœdd *d. lo*[illegible] *n. 73. & ſeq.* Harppr. *d. loc. n. 89.* Paul. Buſ. *lib. 1. ſubtil. c. 4. &* [illegible] *n. ult.* In cenſu autem conſtituendo & acquirendo [illegible] nulla intervenit ſors, multò minùs neceſſariò requiritur: & quando intervenit pecunia vel res alia, eadem abalienatur à dante, abſque ullâ prorſus ſpe repetendi eandem in genere. Nõ enim cenſitus obligatur, neque compellitur ad reſtitutionem pecuniæ, ſed tantummodò ad ſolutionem penſionum. P. Buſ. *lib. 1. de ann. & redit. cap. 2. n. 2.* Felic. de Sol. *d. c. 4.* Et iſtæ penſiones non habent convenientiam cum uſuris: hæ enim ſem-

per

[illegible] ſuam obligationem. Covarr. lib. 3. variar. reſolut. [illegible]

IV. A Pignore & Hypothecâ.

[illegible] enim non competit ullum jus percipiendi fru-[illegible], multò minùs certas penſiones de re ſuâ. [illegible] ſi abſque domini voluntate pignore utatur, furtum [illegible] *l. ſi pi-* [illegible] Panorm *ad c. 1. extr. de pign.* Et fructus etiam [illegible] voluntate perceptos ut partem ſortis accipit, id-[illegible] in ſortem imputantur. *l. 1. C. de diſtract. pignor.* Summerh. [illegible] Fr. Marian. *d. c. 1 n. 66. & ſeqq.* Ac quamvis [illegible] penſiones, pignori nexa cenſeatur, quando [illegible] reditus, cujus dies jam ceſſit *l. fundo D. de* [illegible] *de redit. c. 2. n. 3.* quis tamen non videt, di-[illegible] eſſe rationem [illegible] cenſus, & pignoris pro eo?

V. Ab Antichreſi quoque.

[illegible] contractus pignoratitius, pro ma-[illegible] fide factus, eâ lege, ut donec ſolvatur pecunia, credi-tor [illegible] fruatur re obligatâ, in vicem uſurarum, pro uſu rei [illegible] quem debitor habet *l. ſi quis 11. § 1. D. de pignor. & hypoth.* [illegible] In reditu autem jure ſe res lon-ge aliter habet. Quamvis enim intentum è re, & ejus ratione re-[illegible] rei affectæ creditori minimè per-tineat [illegible] uſusfructus. In antichreſi nullum ſibi [illegible] locum [illegible] penſio, quæ in cenſu eſt potiſſima. Unde [illegible] *lib.* [illegible] *n. 1.* reprehendere eos videtur, qui [illegible] jure promiſcuè docuerunt.

VI. Et ab Emphyteuſi.

Emphyteuſis enim in re propriâ eſt conſtituta, & penſio à domino [illegible] percipitur. Per eam ſiquidem dominium [illegible] (quod utile vulgo vocant) tantùm in emphyteutam trans-[illegible] directum verò retinet dominus *l. 1. & 2. C. de jur. emphyt.* [illegible] *part. 2.* [illegible] Cenſus autem eſt è re aliena, cujus plenum dominium, tàm di-rectum quàm utile, eſt penes cenſitum, etiamſi cenſus ſit reſer-

gativus.*d.Conſtitut.Elect.39.verſ.*Aber ſolches beydes. *ibidemq.* Dan. Moll.*n.5.& 6.*Br.*in l.1.§.1.D.de publ.& vectig.n.4.*Innocent. Abb. & Panorm.*in d.c.conſtitutus 6. extr. de relig. domib.* Alex. *conſ.14.n.8. lib.2.* Jul. Clar. *§. Emphyteuſis.q.8.* Covarr. *d.lib.3. variar. reſol.* ... *n.1.*Everhard.*in Top.in loc. Ab emphyteuſi ad cenſum.n.2.* Valaſc. *de. jur. emphyt.q.32.n.72.*Conſult.Saxon.*part.1.q.18.n.1.tom.2.* Differ. Carol.Molin.*in conſuet.Pariſ.p.2.in pr.n.21.*volens, directum dominium rei penes cenſitorem manere. Emphyteuta ſolvit canonem, cenſitus cenſum. Gl. *in d. c.conſtitutus. verb. juxta ...* *extr.de relig.dom.*Jaſ.*in uſib.feud.n.59.ſub fin.verſ.Confirmo per id.* Emphyteuta ſi per triennium canonem non ſolverit in emphyteuſi ſeculari, per biennium in Eccleſiaſticâ, jure ſuo privari poteſt. *l.in emphyteuticarius.2.C.de jure emphyt.Nov.7.c.3.§. ...* *ult.extr.de locat.& cond.Elect.conſtit.38.d.part.2.* Donell. *lib.9. comment.c.15.*Weſenb. *in parat.D.ſi ager vectig.n.2.*Mynſ.*cent. 3. obſ. 65. n.1.*Dominic.Cardin.Tuſch.*tom.3.pract.concluſ.lit. E. concl. ...* *& ſeq.*Pruckman *conſ.17.q.3 n.118.vol.1.* Cenſitus vero etiamſi per 10.annos. Mynſ. *d. obſerv.65 .n.5.* vel trecentos. Conſult. conſtit Saxon.*tom.1.part.1.q.13.n 5.*vel mille annos cenſum non ſolverit, rem tamen ſuam (unde cenſus præſtandus eſt) non amittit, nec aliquo ejuſdem dominio privatur.*d. conſt. Elect. 39. in pr. verſ.* Dann von wegen. ubi D.Elector indefinite loquitur. Everhard.*in Top.d.loc.n.3.*Jaſon *ad l.1.n.49 & l 2.n.41.& 59.C.de jur. emphyt.*Valaſ.*d.q.32.n 30.*Reinh.Roſ.*ad d.conſtit.39.n. 3.* Sed ... loco pœnę ad præſtationem ejus, quod intereſt, à tempore moræ, de jure civili tenetur. Jaſ.*ad d.l.2.C. de jur. emphyt.* late Matth. Coler.*deciſ.24.n.1.*In his etiam terris denuò ad ſolvendum reditum, & expenſas litis, prævià tamen Judicis moderatione, reſtituendas, & mulctam arbitrariam præſtandam, ſi contumaciter ſolvere ceſſaverit, tenetur.*d.conſtit.39.§.fin & ibi* Dan. Moll. *num. fin.*ſublatâ per deſuetudinem penſione promobili, Kurſſchſiſche Landr.*lib.1.art.54.*Vid.*ibid.*Zobel.*lit.b. & e. & part.2. diff. 45. n. 1. & ſeqq.& n.16.*Reinh.*part.1.diff.11.*Conſult.conſtit.Saxon.*d. tom. 1.part.1.q.13.n.6.& ſeqq.& num.ult.*Emphyteuta jus ſuum non requiſito domino vendere nequit.*l.fin.C.de jur.emphyt.* At cenſitus bona cenſitica liberè alienare poteſt, neque ullum pro...

ſeu

ſe.. jus competit cenſitori, ut latè tradit Andr. Rauchb. *part. 2. q. 2.* Vid. Hartm. Hartm. *lib. 2. t. 52. de cenſib. obſ. 1. n. 4. & ſeqq.* Matth. Berlich. *part. 2. concluſ. practicabil. concl. 4. n. 2. & ſeqq.* Diſſent. Tiraq. *de retract. lignag. 1. §. 34. gl. 1. n. 1.* volens, cenſum & emphyteuſin non multum differre, & promiſcuum utriusque juris uſum eſſe: ubi & ſecum facientes allegat Ang. *conſ. 184. col. ult.* & Joh. de Plat. *in §. adeo 3 q. 9 I. de locat.*

VII. In dubio autem anne præſumetur cenſus, an verò emphyteuſis? D.

Si à multis annis penſiones annuæ fuerunt ſolutæ, & plane ignoratur, quo titulo, ita ut ejus nullum habeatur indicium; primò reſpiciendum videtur ad majorem frequentiam contractus in iſta provincia, ut ſi crebrior ſit emphyteuticus, pro eo præſumtio fiat, ſin autem cenſualis frequentior, pro hoc quoq; præſumatur *l. ſemper 34. l. in obſcuris 114. D. de R. I.* Jaſ. *in d. l. 2. C. de jur. emphyt. n. 165.* Ludov. Molin. *de contract. diſp. 381. n. 6. & ſeq.* Petr. Follet. *in Prax. cenſual. cap. Cenſus p. 368. n. 80.* Frid. Martin. *d. c. 1. n. 199. & c. 7. n. 123.* Si verò de majori frequentiâ alterius contractus non cōſtet, pro cenſu potiùs, quàm pro emphyteuſi præſumetur. Tum enim id ſequendum, quod minimum *l. ſemper in obſcuris 9. d. l. 34. in fin. D. de R. J. c. in obſcuris 30. de R. J. in 6.* Quod minimum non ex parte creditoris ſeu petitoris, ſed debitoris & poſſeſſoris eſt perpendum *arg. l. veteribus 39. D. de pact. l. quicquid adſtringendæ 99. de V. O.* ... autem reſpectu contractus cenſualis minoris eſt præjudicii, quàm emphyteuſis, ut è *præced. theſi* apparet. Maſcard. *de probat. concluſ. 281. vol. 1.* Covarruv. *d. c. 7. n. 1. verſ. Imo in eo dubio.* Natt. *conſ. 3. n. 2.* Ruinald. *conſ. 42. n. 7. lib. 1.* Socin. ſen. *conſ. 167. col. 2. n. 6. verſ. quin imo. & conſ. 266. n. 6. lib. 2.* Fachin. *conſ. 30. n. 11.* Aurel. Corb. *de jur. emphyt. c. 15. lim. 34.* Frid. Mart. *dd. loc.* Quā ſententiā quoq; D. Aug. Elector expreſſe cōfirmat *d. conſt. 39. §. ſ. p. 2.* Diff. Matth. de Afflict. *deciſ. 129. n. 8.* Jul. Clar. *d. §. Emphyteuſis. q. 1 n. 3.* Alv. Valaſc. *d. q. 32. n. 35.* Joh. Fab. *ad l. 1. C. de jure emphyt. n. 7.* Lud. Roman. *conſ. 70.* Alb. Brun. *conſ. 41. n. 2.* Schurff. *conſ. 56. n. 1. & ſeqq. cent. 1.* Matth. Coler. *conſ. 5. n. 9. & ſeq. vol. 1.* Mynſ. *d. obſerv. 65. n. 7.* Habetque iſta præſumptio locum etiam adverſus Eccleſiam, ex eadem juris ratione

ne, quâ communi in dubio eccleſia utitur, quodq; eidem tanquam cultrici & auctrici juſtitiæ 1. *Feud.t.13.verſ.Eccleſia enim*.cum alterius præjudicio non favendum videatur. Dan. Moller. & Reinh.Roſ.*ad d.conſtit.39.n.4*.Fachin.*d.conſ.30.n.21.verſ. ad quartū*. Diſſ.Berous *q.14.n.2.* Mynſ. *d. obſ.65.n.ult*.Conſult.conſtit.Sax.*d.tom.1.part.1.q.13.n. ult*. Procediq; iſta præſumptio etiamſi in inſtrumento dictum fuerit,*concedo tibi talem rem in emphyteuſin perpetuam,& omne jus,quod habeo in illâ re*. Per *jus* enim *omne* proprietas ſeu dominium directum intelligitur.Joh.de Imol. *in c. ad audientiam 9.ext.de rebus eccleſ.alienand.vel non,col.2*.Jaſ. *ad d.l.1.n.48.C.de jure emphyteut*. Everh.*d.loc.n.6*.Apud quos autores etiam aliæ variæ extenſiones & limitationes leguntur.

IIX. *Diſtinguitur etiam Cenſus ab annonâ civili.*

Hæc enim eſt publica *l.1.C.de ann civil.lib.11.* & liberalitatis vel remunerationis gratiâ *d.l.1*.plerunq; à Principibus ut congiarium donabatur populo,vel certis quibuſdam perſonis *l. 2. d.t. C.de ann.civil.lib.11*.Petrus Greg.*lib.36.Syntagm.c.30. n.1*.Alciatus *lib. 8.parerg.c.5*.Vid.Cujac.*in parat.C.de ann.& capit.admin.& in l.1.C.de ann.civil*.Don.*lib.17.comment.c. 15*. Vertran. Maur. *de jure liber.c.16*. Gentil.*de aliment.c.17*.Lipſ.*lib.1.Elect. c.8*. Cenſus autem privatus eſt.Annona conſiſtit in ſpeciebus tantùm,ut vino , oleo, liquamine,pane,lardo; non in corporibus.Penſiones autem è jure cenſitico,in corporibus etiam ut gallinis,anſeribus, agnis , avibus,piſcibus &c.conſiſtere poſſunt.Vid.Buſ.*d. c. 2. n. 4. & 5*. Diſſ. Gl.*ad Nov.7.præfat.& ad Nov.72.c.7.verb. Reditus*. cenſum & annonam civilem non differre putans.

IX. *A ſervitutibus quoq; propriè ita dictis realibus & perſonalibus.*

Servitus enim realis eſt jus in prædio alieno,quo dominus ejus prædij,quod alteri vicino commodum eſt, in ſuo pati aut non facere tenetur *l.quoties 15.§.1.D.de ſerv*.In cenſu autem non tenetur prædij vicini dominus aliquid pati vel non facere in ſuo; ſed hoc requiritur, ut dominus prædij etiam remotiſſimi præſtet id,quod in obligationem deductum eſt.In ſervitute per-

ſonali

ſonali præſtatur certa penſio, quæ in cenſu minimè eſt neceſſaria. Servitus perſonalis perſonam non egreditur, unde morte extinguitur *§. finitur I. de uſuf. l. ſicut 3. §. ult. D. quib. mod. uſusf. vel us. amitt. l. ſi domina 10. l. ambiguitatem 12. l. corruptionem 16. C. de uſufr.* aſt non cenſus, niſi ſub eâ conditione conſtitutus, quæ de ejus naturâ non eſt. Ac neq; jus redituum ad uſumfructum, nec uſum, nec aliquam aliam ſpeciem ſervitutum perſonalium in jure proditam referri poteſt. Unde ſimpliciter à ſervitutibus realibus & perſonalibus ſeparatur in *l. Gajus 12. D. de ann. legat.* Buſ. *d. c. 2. n. 7.* ubi tamen *n. 8.* adjicit; quomodo hodiernis moribus interdum à ſervitute uſus non multùm in effectu differre videatur, qua ratione excuſat Bl. *in l. 2. C. de ſerv. & aq. n. 41.* Br. *in l. 2. D. quor. bon. in fin.* Roman. *conſ. 311. verſ. quo ad text.* qui ſtatuunt, redituum jus ſpeciem ſervitutis conſtituere. Veram ſervitutis ſpeciem cenſus nõ conſtituit. In quibusdam verò ſervituti ſimilis eſt. Unde & quaſi ſervitus interdum indigitatur.

X. Quæritur autem: an Cenſus ſit inter bona mobilia vel immobilia referendus? D.

Bonorum appellatione univerſali, & ſimplici etiam ſeu indefinitâ cenſum quoque venire liquet inde; quia nomen bonorum & jura deſignat *l. bonorum 49. verſ. æquè D. de V. S. c. fin. in pr. de reb. Eccleſ. non alien. in 6.* Fac. huc *§. item ſi quis 6. Inſtit. de act. l. quam Tuberonis 7. § in peculio 4. D. de pecul. l. fin. D de uſu & uſufr. leg. l. precia rerum 63. § . 1. l. quærebatur 82. D. ad L. Falcid. l. Princeps bona 21. D. de V. S. cum ſimilib.* Tiraq. *ad l. ſi unquam 8. verb. bona. n. 8. C. de revoc. donat.* Propriè autem nec mobilibus, neque immobilibus jura (in quibus & Cenſus eſt) continẽtur *l. à divo Pio 15. §. in venditione 2. D. de re judic. l. 1. §. cum autem 7. verſ. exactio* C. *de rei uxor. act, l. omnes 2. in pr. l. ſin. verſ. & nemo. C. de quadr. praſcr.* Facit huc *d. l. quã Tuberonis 7. §. in peculio 4. D. de pecul. l. ſi mihi Mævia 92. D. de legat. 3. l. fin. in pr.* D. *de donat. l. 1. C. de prætor. pign.* Panorm. *in c. nulli 5. extr. de reb. Eccleſ. alien. vel non n. 9.* Tiraq. *de retract. lignag. § . 1. gl. 6. n. 3. & gl. 7. num. 9.* Ar. Pinel. *ad rubr. C. de bon. mat. part. 1. num. 24 & ſeqq.* Jac. Schult. *ad Modeſt. Piſt. quæſt. 124. num. 5 & ſeqq. part. 3.* Bon. *art. 14. num. 33.* Paul. Buſ. *de reditib. lib. 1. cap. 3. num. 3.*

Et rectè. Localis enim mobilitas & immobilitas ſolis competunt corporibus. Ariſtot. *lib. 3. & ſeqq. Phyſ. acroa. ſparſim. & lib. 1 de cœl. §. 99.* Scalig. *in lib. 1. Ariſtot. de Plant.* Zabar. *lib. de Natural. ſcient. conſtit. c. 4.* Quomodo enim id, quod neque cerni, neque tangi, neque ullo alio ſenſu percipi poteſt, cui etiam nullus competit locus, dicetur ſenſibiliter & localiter moveri vel nō moveri? Hujus autē generis ſunt omnia jura, utpote incorporalia *verſ. Incorporales. de reb. corpor. & incorpor. l. 1. §. 1. verſ. Incorporales. D. de R. D. l. ult. verſ. & nemo audeat. C. d. quadr. præſcript. Caj. lib. 2. Inſtit. t. 1. §. prætereà. 2.* Sin autem omninò ob aliquam neceſſitatem urgentem ad alterutram ſpeciem jus cenſus eſt referendum, commodiſſimè videtur denominationem accipere à ſubjecto, cui inhæret, & è quo cenſus debetur, ita, ut ſi ſubjectum ſit mobile, cenſus quoq; res mobilis habeatur: ſin illud fuerit immobile, talis quoq; cenſus exiſtimetur. Cum enim accidens à ſubjecto pendeat, & in eo tantùm ſit, ejusq; ratione conſiderari ſoleat. Ariſt. *lib. 1. poſter. Analyticor. c. 4. §. 9. (ibidemq;* Zabar. *in cujus editione eſt §. 53.) lib. 1. Phyſic. §. 26. & ſeqq. lib. 7. Metaphyſ. c. 1. §. 1. & ſeqq. ac alibi.* Ægid. Rom.. *lib. 7. Metaph. q. 2.* Jandun. *lib. 7 Metaph. q. 9.* Thom. de Aquin. *Opuſc. 41. de nat. accid.* Suarez. *diſp. Met. 37. ſect. 2.* exinde quoq; nō iocongruè denominationem ſortietur. *V. d.* Thom. *d. Opuſc 41.* Unde & cautiones, pro diverſâ rerum ſubjacentium ratione, immobiles, vel mobiles habentur *l. ſi ad reſolvendam 7. C. de præd. & al. reb. min. ibidemq;* Gothofr. Nomina & actiones quoque exinde æſtimantur. Coſtal. *ad d. l. 7. §. 4. D. de pecul.* Alciat. *ad l. moventium 93. D. de V. S. n. 3.* Tiraq. *de retr. lignag. d. §. 1. gl. 7. n. 1.* Coler. *de proceſſ. execut. part. 1. c. 3. n. 251. & ſeqq.* Roſenth. *de feud. c. 4. concluſ. 6.* Schult. *d. loc. n. 17. & ſeqq. ac quæſt. pract. 40. n. 10. part. 1.* & in Camerâ Imperiali ita judicatum teſtatur Gail. *lib. 2. obſerv. 11. n. 10* Ac alia jura quoq;. Vid. Matth. Stephan. *cent. 2. quæſt. 10.* Hinc in jure annui reditus accenſentur immobilibus, quando videlicet è rebus immobilibus, vel ijſdem ſimilibus debentur *Clem. Exivi. §. cumq;, annui reditus. de V. S.* Fac. huc *d. l jubemus nulli 14. in pr. C. de SS. Eccl. & d. Nov. 7. in præfat.* Br. Alex. & Jaſ. *in l. ſciendum 15. D. qui ſatud. cog.* Anton. Gabriel. *comm. concluſ. lib. 7. de V. S. concl. 8. n. 2.* Frid. Mart. *d. c. 1. n. 100.* Matth. Steph, *d. cent. 2. q. 9.* P. Heig. *ad tit. J. de reb. corp. & incorpor. n. 19.*

*por.n.19.& ſeq.*Harppr. *ad eund. tit.n.ult.* Diſſent.Bl. *in proœm. feud. n.20.& ſeq.*P.Buſ. *d.lib.1.c.3.n.4.ac 7 & ſeqq.*Schult.*ad d.q.124. Piſt. n.61.* Monent Dd.comm.in hac quæſtione etiam ad durationem cenſuum reſpiciendum eſſe,ut ſi iſti fuerint perpetui,vel ad longum tempus conſtituti, pro immobilibus habeantur; aliàs pro mobilibus.Gl.Br.& Bl. *ad l.jubemus 14.C.de SS.Eccleſ.* Idem Bl.*ad l.hac edictali 6.§.1.n.1.C.de ſecund. nupt.*Tiraq. *d.* §. 1. *gl. 6.n.7. & ſeqq.*Gail.*d.lib.2.obſ.10.n.*1.Mynſ.*cent.1.obſ. 69. n.* 2. *&* 11. Schrad. *de feud. part.3.c.3.n.5.*Nicol.Vigel.*in Method. jur. controv. lib. 3. c. 16. reg.11. & in Method. obſ. Cam. lib. 3.c.11.in pr.* Niell. *diſp. feud. 3. th.2.* Quam diſtinctionem impugnat quoq; Buſ.*d.loc.n.5. & ſeq.* acriter tamen iſtam propugnat Jac.Schult.*d.loc. n. 50. & ſeqq.* In dubio quidem præſumetur cenſus potiùs immobilis quàm mobilis *arg.d.Clem.Exivi.§.cúq; annui reditus.de V.S.l.jubemus 14.in pr.C.de SS.Eccleſ.Nov.7.in præf.Vid.*Panorm.*in d.c.nulli 5.extr.de reb.Eccl.n.10.* De jure Saxo.ſi ob neceſſitatem aliquam ad alterutram ſpeciem referri debent jura annuorum cenſuum, ſive debeantur è rebus mobilibus ſive immobilibus, pro immobilibus reputantur,ſi ſors repeti nequit. Landr.*lib.3.art.76.in fin.& part.3.Conſtitut. Elect. D.Aug.* 24. *in fin.ibi.* In beyden fällen. junct. Landr.*lib.1.art. 31. & d. lib.3.art.76.in med.ibi.* Der Mann behelt *&c.Conſt.Elect.21.& ſeqq.d. part.3.Senten.Scabin Lipſ.poſt* Landr.*tit.*von Succeſſion auff Erbgüter.§. Vnd dieweil widerkeufliche Jährliche.Lud.Fachſ. *diff.34.inter different.Zobel.part.3.diff.9.n.*4. Col. *de proceß.execut.part.1.c.3.n.*243. *&* 248. Schneid. *ad t.Inſtit.de hered.quæ ab inteſt. defer. tit. de ſucceß. int.vir.& ux.n.33.& ſeqq.*Dan. Moll.& Reinh. Roſ.*ad d.Conſtit.*24. Quamvis olim aliter Wittebergæ & Lipſiæ de conſuetudine pronunciatum fuerit. Henning. Göden.*conſil. 74. n. 5.* Hieron. Schurff.*conſ 72.n.6.cent.3.*Coler.*deciſ.59. n. 17.* Jac. Thoming. *deciſ. 3.n.10.*Quod excuſare conatur Schult.*d.q.124.n.83. & ſeq.* In quibuſdam alijs quoq; locis Germaniæ eâ de re habentur ſtatuta &conſuetudines à jure communi diſſonæ.Gail.*d.lib.2.obſ.10.n.fin.*

XI. Dividitur Cenſus variè. Vtpote, in Realem, Perſonalem & Mixtum.

Realis rebus tantùm imponitur, utpote fundis, prædijs,

 domi-

domibus,&c.& res ipſas principaliter obligat; rebus enim cohæret, nec ab ijs ſejungitur, etiamſi in alium transferantur. Unde & iſte tranſit in heredes utrinq;, ejusq; ratione perſona ſecundariò tantùm obligatur, ratione detentionis videlicet. Perſonalis perſonis imponitur: & tum eæ tantùm vel potiſſimùm ſunt obligatę, aut ad tempus certum, aut incertum vitæ, & vel dantis, vel accipientis. Conr. Summerh. *de contract. q. 72. ſupp. 3.* Sot. *de J. & J. d. lib. 6. q. 5. art. 1.* Talia apud veteres legata redituum pleraq; fuiſſe videntur *l. ſi in ſingulos 4. l. in ſingulos 8. D. de ann. leg. l. patrimonij 22. D. de uſu & uſufr. leg.* Buſ. *d. lib. 1. c. 4. n.* 3. Mixtus in re & perſonâ ſimul & indiſtinctè conſtituitur. Felic. de Sol. *lib. 1. de cenſ. c. 4. num. fin.* & vel expreſsè, vel tacitè. Frideric. Martin. *cap. 4. num. 54.*

XII. In Reſervativum & Conſtitutivum.

Ille dicitur, quando dominus rei ſuæ plenum dominium transfert in alium, eâ conditione, ut accipiens tradenti certam annuam penſionem è re traditâ præſtet *l. fi. C. de rer. permut.* Gl. *ad d. c. conſtitutus 9. ext. de relig. domib.* Imol. *in c. ad audientiā 9. extr. de reb. Eccleſ. alien. vel non.* Petr. Foller. *in prax. cenſual d. c. Cenſus. num. 5. pag.* 333. Felic. de Sol. *d. c. 4. num ult.* Hunc fundiarium appellat Carol. Molin. *de commerc. q. 20. num.* 112. non tamen ſuper fundo tantùm conſtituitur, ſed ſuper rebus mobilibus quoque. Conſtitutivus, qui & *Conſignativus & Impoſititius* dicitur, eſt, quando dominus è ſuis rebus jus redituum alteri conſtituit. Summerh. *d. q. 72. ſupp.* 7. Aym. Cravett. *conſ. 217. num 4* Binsfeld. *ad c. in civitate 6. extr. de uſur. q. 9.* Frid. Martin. *d. c. 2. num. 19. & fin.* Uternam autem in dubio præſumetur? Hic; quia frequentior, pro quo eſt præſumtio *d. l. ſemper 34. d. l. in obſcuris 114. D. de* R. J. & benignior ac minoris præjudicij, reſpectu cenſiti; pro quo etiam præſumitur *d. l. ſemper in obſcuris 9. d. l. 34. de* R. J. *c. in obſcuris 30. de* R. J. *in 6.* Vid. *ſup. theſ. 7.* Carol. Molin. *de commerc. q. 20. num. 213.* Lud. Molin. *de contract. diſp. 381. verſ. dubium eſt.* Diſſent. Covarr. *lib. 3. variar. reſol. c. 10. num. 5.* Petr. Binsfeld. *ad d. c. 6. extr. de uſur. q. 13. concl. 4.*

XIII. In Pecuniarium & Fructuarium.

Ille eſt, quando penſio ſolvenda eſt in pecunia numerata. Hic, cùm in fructibus, ut vino, frumento, oleo, ligno, animalibus &c. Covarr. *d. lib. 3. reſol. cap. 7. num.* 3. Martin. Navarr. *ad c. ſi fœneraveris. cauſ.* 14. *q.* 3. *num.* 104. Carol Molin. *de commerc. q.* 21. Frideric. Martin. *d. c.* 2. *num.* 17.

XIV. In Simplicem ſeu Purum, & Mixtum ſeu Impurum.

Ille dicitur, qui ſimpliciter & purè abſque ullis pactis eſt conſtitutus. Hic, qui certa habet adjecta pacta. Cum enim omnes contractus regulariter aut purè aut cum pactis celebrari poſſint §. *omnis ſtipulatio* 2. *Inſtit. de V. O.* §. *emtio* 4. *Inſtit. de emt. & vendit.* §. *pen. Inſtit. de locat. & cond. &c. text. ſimil.* contractus quoque cenſualis eodem jure gaudet. Summerh. *de contract. q.* 76. Covarr. *d. lib.* 3. *reſol. c.* 8. *in pr.*

XV. In Antiquum & Novum.

Antiquus indigitatur, qui antiquitùs & à multis annis eſt conſtitutus. Novus, qui noviter imponitur. Covarr. *d. lib.* 3. *reſol. c.* 7. *n.* 2. Frid. Mart. *d. c.* 2. *n.* 12.

XVI. In Perpetuum & Temporalem. Ille ſubdividi ſolet in Redimibilem & Irredimibilem. Hic in eum, qui certi temporis eſt, & qui incerti.

Perpetuus vocatur, cui nullum eſt præfinitum tempus, ſed habet perrennem & perpetuam durandi cauſam. Temporalis, cui definitum tempus eſt, quo decurſo extinguitur. Sot. *d. lib.* 6. *de J. & J. quæſt.* 5. *art.* 1. Redimibilis dicitur, qui redimi

redimi poteſt. Irredimibilis, qui redimi nequit. Et hos duos poſteriores cenſus eſſe ſpecies cenſus perpetui ſtatuunt Summerh. *d.q.72. ſuppoſ.*4. Carol. Molin. *in conſuetud. Pariſ. t.1. §.13. gl. 5. q.10. in fin.* P. Foller. *d. c. Cenſus. n. 33. pag.* 343. Frid. Mart. *d. c.2. n.14.* & alij; quòd perpetuam durationis cauſſam redimibiles quoque habeant, dum nondum redemti ſunt *arg. l. ſufficit 56. D. de cond. indeb.* Vid. Tiraq. *de retract. lignag. d. §.5. gl.34. n.140. & de retr. convent.* §.2. *gl.1. n.39.* Cenſus temporalis certi temporis eſt, qui ad certum & determinatū tempus, putà 20.30. &c. annos ſolùm durat. Unde & Determinatus indigitátur. Felic. de Sol. *d. c.4. n. fin.* Incerti temporis, qui tempore quidem extinguitur, quod tamen, antequàm advenit, incertum eſt, ut ſi ad emtoris vel venditoris vitam cenſus conſtituatur. Obitus enim tempus incertum eſt. Unde & Indeterminatus appellatur. Félic. de Sol. *d. loc.* Vid. Frid. Martin. *d. loc. n.15.*

XVII. *Conſtituitur autem Cenſus in re fertili & utili, non ſterili.*

Si enim Cenſus è re præſtari debet, neceſſum eſt, ut res ei ferendo ſit idonea & ſufficiens. Quod enim non eſt, nec erit in rerum naturâ, id alteri non poteſt concedi. Et licèt pro fructu interdum aliud quid detur, ſi tamen ille debet æſtimari, neceſſariò aderit; ſi enim nullus eſt, nec ſperatur, quomodo æſtimabitur? quomodo commutabitur? Ubicunq; proinde nullum commodum, ibi nec jus percipiendi iſtud. Hincq; *in c.1. & 2. de emt. & vend. in extravag. comm.* tantùm rerum utilium & frugiferarum exempla recenſentur. Diſſent. Covarr. *d. lib. 3. reſol. c.7. n.5.* Bened. Bon. *de cenſ. art. 10. & 12.* Non autem refert, an res, ſuper quibus cenſus conſtituitur, ſint immobiles, ut prædia, agri, prata, horti, vineæ, domus &c, *d. extravag. comm. 1. & 2. de emt. & vend.* ſive mobiles, ut naves, vaſa &c. ſive ſe moventes, ut vaccæ, capræ, oves, apes &c. ſive in jure ſolùm conſiſtant, ut hereditates &c. *d. 1. & 2. extravag.* modò ſint utiles. Ubiq; enim tum eadem ſubeſt ratio commoditatis; cujus intuitu Cenſus imponitur, non obſtante Bulla Pij V. de cenſib. apud Germanos nunquam receptâ, nunquam approbatâ. Frid. Mart. *.c.4. n.74.* Unde in mo-

ien-

lendinis, arboribus ſolo affixis, horreis, cellis, navibus, jurib. venationum, piſcationum & aucupiorum, juriſdictione, camerâ principis, annonis publicis, tributis, vectigalibus, pedagijs, gabellis &c. ac ſuper cenſu cenſus conſtitui poteſt. Felic. de Sol. *lib. 2 c.3 n. 22. & ſeqq.* Frid. Mart. *d.c.4.n.78. & ſeqq.*

XIIX. *Quid igitur ſtatuendum de re, quæ uſu conſumitur?*

Ejuſmodi res ſunt vinum, oleum, frumentum, pecunia &c. § *conſtituitur 2. Inſt. de uſufr.* In quibus regulariter cenſus non videtur conſtitui poſſe, quia in ijs jus utile extra earum interitum & conſumtionem non datur. Medin. *de reb. per uſur. acquiſ. q. 11. caruſ. 3.* Si tamen eæ res fuerint in ſtatu fructificandi, utpote expoſitæ negotiationi, tum in ijs cenſum conſtitui poſſe, ſtatuunt Sot *de J. & J. 1. lib. 6. q. 5. art. 1.* & Frid. *Mar. d.c.4. n. 5.* Quorum opinio ſi locum obtinere debet, res eæ non præciſè in ſpecie, vel individuo (ut loquuntur Philoſophi) erunt conſiderandæ; ſed in genere, ut reditus inde ſint ſimiles reditibus de camerâ & de cavenâ.

XIX. *Sed anne poterit imponi rebus incertis & bonis generaliter? A.*

Non opus ſiquidem eſt ad hujus licitam conſtitutionem certarum rerum expreſſâ nominatione, ſed poteſt reditus ſuper omnibus bonis, vel incertis rebus conſtitui modo ad ferendum cenſum ſufficientibus *d. 1. & 2. extravag. comm.* ubi emtio ſuper hereditate, quæ juris nomen eſt, ſuoque ambitu plura diverſa corpora, eaque incerta comprehendit, licita ſtatuitur. Innoc Panor & Bero *ad d. c. 6. extr. de uſur.* Summerh. *q. 83. concl. 13.* Car. Molin. *de commerc. in pr. num. 22.* Laurent. de Rodolph. *ad c. conſuluit 10. extr. de uſur. part. 2. q. 13.* Diſſent. Chaſſan. *in conſuet. Burg. rub. 11. de cenſib. § 6. in pr.* Mart. Nav. *ad d.c.1. cauſ. 14. q. 3. n. 86.* Virgin. de Boccac. *de interd. uti poſſid. c. 18. rubr. de cenſib. q. 10. n. 20.*

XX. *Requiritur verò; ut res cenſui ſubjectæ in alicujus dominio ſint, vel eſſe poſſint.*

 Unde

Unde cenſus nequit imponi [illegible] jure naturali [illegible] communes ſunt, quæ planè publicæ, quæ nullius ſunt [illegible] §.1. [illegible] §. [illegible] de R. D. [illegible] enim nulla [illegible] obligatio [illegible] *Inſt.* [illegible] *Cujus 6. D.* [illegible] *d. O. &* [illegible] 3 §. [illegible] 5 D. [illegible] [illegible] res nec obligari [illegible] *pign.* multo minus igitur cenſui ſubjici [illegible] rum communis eſt, & privatorum [illegible] imponeret cenſum [illegible] re cujus nullam habet [illegible] poneſet Vid. Felic. de Sol. [illegible] c. 3. [illegible] 1. [illegible] bus Eccleſiæ cenſus conſtitui? S[illegible] majorem Eccleſiæ, poterit [illegible] ſata ſolennitate præſcripta [illegible] *de reb. Eccleſ. rubr. de* [illegible] *Cenſus n. 17. pag. 336.* [illegible] conceſſione [illegible] enim cenſus conſtitui [illegible] per rebus ſacris [illegible] niſi ſumma [illegible] ceſſitate *arg. l.* [illegible] 21. C. de S. S. [illegible] *can. 12. q. 2.* [illegible] *de pignor.* [illegible] ſuper rebus Univerſitatis. Sic [illegible] prio patrimonio reipubl. [illegible] *de A. R. D.* & obſerventur requiſita alienationis [illegible] ipſæ obſervandæ hic videntur [illegible] [illegible] P. Faller. [illegible]

XVI. *Cenſus quoq; in ſola perſona* [illegible] *poteſt.*

Et quidem perſonali obligatione [illegible] cedi poteſt [illegible] in perſona [illegible] ſtâ re ſolvenda: vel operæ alteri [illegible] ra ſit induſtria & bonæ frugi, & vel [illegible] dam. Siquidem hæ perſonales obligationes [illegible] ſpiam in jure ſunt prohibitæ [illegible] [illegible] homo alii operas [illegible] [illegible] liber homo ſe obligare pro debito [illegible] [illegible] *c. ex reſcripto 9. extr. de jurejur.* [illegible] *C.* [illegible]

[illegible] c. [illegible] lib. 2. obſerv. 45. & lib. 2. de pac. publ. c. 2. n. 7. & ſeqq. quoque [illegible] (quæ ſpecies carceris) propter abuſum in Romano Imperio ſunt ſublata Policey Ordnung *Francof. Anno* [illegible] *ſub tit.* Von wucherlichen Contracten §. Wiewol auch *&c.* Ergo multo magis ad penſiones vel operas. Apud Romanos olim creditori licebat debitorem lege nexus in ſervitutem addicere. [illegible] *in Topic. in Parad. de Orat. in Epiſt. ſ. famili-* [illegible] Quæ autem comparatio inter ſervitutem & penſiones [illegible] operas Vid. Sot. *d. lib. 6. art. 6. q. 1.* Ant. Gomez. *in l. 68. Taur. n. 2.* Covarr. *lib. 3. variar. reſol. c. 7. n. 5.* Hotom. *lib. 2. de uſur. c. 4.* Felic. de Sol. *lib. 1. c. 8. n. 3. & ſeqq.* Frid. Martin. *d. c. 4. n. 21. & ſeqq.* Diſſent. Nav. *ad d. c. n. 81.* Franciſc. Sarmient. *lib. 7. ſelect. interpret. c. 1. num. 3.* Alv. Valaſc. *de jur. emphyt. q. 31. n. 10.* Fachin. *lib. 2. controv. c. 44.*

§. XII. Conſtituere Cenſum poteſt ſui juris homo, plenum habens dominium, poteſtatemq; ſe ſuave obligandi.

Qui enim poteſtati alienæ non eſt ſubjectus, & commodum ac incommodum ſuum plenè intelligit, ſuamq; perſonam alias civiliter obligare poteſt, quid ni ſe quoque ad cenſum obſtringere valeret? Quive judicio ſufficiente inſtructus rerum ſuarũ eſt perfectus moderator & arbiter *l. in re mandatâ 21. C. mand.* eaſque quocunque modo obligare & planè alienare poteſt, cur iiſdem onus hoc imponere prohiberetur? Qui verò dictis eminentiis non gaudent, onus cenſus quoque nec ſibi, nec rebus etiam ſuis imponere queunt. In horum numero ſunt 1. Servus *l. in perſonam 22. in pr. l. quod attinet 32. D. de R. J. l. quotiens 13. D. ſi quis cautio. l. nec ſervus 41. D. de pecul. l. ſervi 14. D. de O. & A. l. ſervus 6. C. de judic.* Conſt. Harmenop. *in epit. Jur. Civil. lib. 1. t. 24. in pr.* niſi juſſu domini; tum enim dominus obligatur *l. 1. in pr. D. quod juſſ. l. hoc jure 192. §. ad eu dominum 169. in pr. D. de R. J.* 2. Furioſus *§. furioſus 8. I. de inutil. ſtipul. l. 1. §. furioſum 12. D. de O. & A. l. in negotiis 5. l. furioſi 40. D. de R. J. l. emtionem 2. C. de contr. emt.* niſi tempore intervalli dilucidi *§. 1. I. quib. non eſt perm. fac. teſt. l. penult. C. de curat. fur.* An autem actus geſtus ſit tempore furoris vel intervalli, ex ipſius actus quali-

[illegible] æſtimandum erit. Mynſ. *cent.* 2. [illegible] 4. Vigl. [illegible] [illegible] *n.* 6. 3. Mente captus qui furioſo æquiparatur *l.* [illegible] 25. D. *de* [illegible] & impuberi §. 1. *Inſt. de pup.* [illegible] C. *de* [illegible] [illegible] *l. pater furioſi* [illegible] *qui ſui vel alien. jur.* [illegible] C *qui teſt. fac. poſſ.* [illegible] Quomodo autem differant furioſus & mente captus [illegible] *l. ſi* [illegible] *non* [illegible] *n.* [illegible] Idem de ſtulido, ſtupido & ſimplici [illegible] gendum: habet enim is cum [illegible] validitatem actuum ab ipſo confectorum [illegible] *fac.* Vigl. *ad d.* §. 1. *Inſt. de pup. ſubſt.* 4. [illegible] & alienationem mentis inducit, [illegible] furioſo; conſentire is ſiquidem nequit, [illegible] Unde contractum, teſtamentum & quamlibet [illegible] tionem per talem ebrium factam inutilem [illegible] latè Rip. *ad l. ultim. C. de revocan. donation.* [illegible] 5. Prodigus, cui bonis interdictum eſt *l. Julianus* [illegible] *cui bonis* 6. *D. de V. O. d. l. furioſi* 40. [illegible] 7. Quid verò [illegible] dum de muto & ſurdo? Et utroque [illegible] intellectum habeat, & per [illegible] clarare poſſit, utpote ſi literas intelligat, [illegible] cur [illegible] conſtituere prohibeatur? [illegible] laborante alterutro vitio [illegible] *num.* 3. 6. Impubes §. [illegible] *de acquir. vel om. hered. l. obligari* [illegible] *D de* [illegible] *D. de O. & A. l.* [illegible] 2. *D. de V. O.* [illegible] bes etiam §. 1. *Inſt. per quas perſ. cuique acquir.* [illegible] *l.* 1. & *ſeqq. C. de bon. quæ lib.* niſi ratione bonorum [illegible] ſtrenſis, ac quaſi caſtrenſis *l.* 1. *in fin.* [illegible] *c caſtrenſe* 15. *D. de* [illegible] *l. ult. C.* [illegible] [illegible] *C. de bon. quæ lib. l.* 2. & 3. *C.* [illegible] *de inoff. teſtam.* & adventitii [illegible] ſumfructum [illegible] & *ſeqq.* [illegible] *Nov.* [illegible] *cap.* 2. *Nov.* 124. *cap.* 15. §. [illegible] 8. [illegible] ratorem habens, abſque eo *l. ſi* [illegible]

[illegible] juramentum acceſſerit *auth. Sacramenta puberum C. ſi* [illegible] vel [illegible] per legatum fiat in teſtamento, quod [illegible] *l. 1 quæ ætate 5. D. qui teſt. fac. poſſ. l. ſi frater 4.* [illegible] curatore poterit contractum cenſuale [illegible] ſed adverſus illum poterit uti beneficio reſtitutionis in integrum *d. l 3. C. de in integr. reſtit. min.* Vid Te-[illegible] [illegible] *d. lib. 1. cap. 5.*

XXIII. *Poterunt ne verò ij etiam, qui pro parte tantùm domini rerum ſunt, iiſdem cenſum imponere? D.*

Huius generis ſunt Socius reſpectu rei communis, Proprietarius autem, & qui dominium juris tantùm habent, ut Uſufructuarius, Emphyteuta, Vaſallus & Superficiarius. De quibus tenenda regula. Quod nihil iſti in cæterorum dominorum poſſint facere præjudicium. Unde in quantum cenſus conſtitutio non vergit in damnum aliorum, eadem iis [illegible] cæteris non requiſitis. Nulla enim hic denegationis & prohibitionis ratio. Hinc Socius in re communi, pro ratione competentis partis, in ſolum ſui ipſius præjudicium, cenſum conſtituere poteſt; quoniam ita eandem obligare poteſt *l. 1. C. ſi comm. res pignor. data ſit.* & diſtrahere ſeu alienare *l. fin. 3. C. de comm. rer. alien.* Hieron. [illegible] *c. 10.* Proprietarius nudus, cum [illegible] omni jure utendi & fruendi, cenſum rei propriæ imponere nequit, ut ex illius commoditate percipiatur; imò nec conſentiente uſufructuario rei ſervitutem imponere poteſt *l. [illegible] D. de uſufr.* Niſi forſan ad id tempus, quo [illegible] fruendi recuperabit; tunc enim locum habet regula *l. [illegible] C. mandat.* Reditus autem non prius debebuntur, quam tempus illud advenerit. Sed obligare rem propriam pro eodem, qui aliunde debitor, non prohibetur *[illegible] C. de uſufr.* Uſufructuarios licet, non requiſito proprietatis domino, è fructibus, quamdiu utitur fruitur,

 redi-

fruitur, reditum temporalem conſtituit. Poteſt enim uſumfru-
ctum pignori dare *l. ſi u u. §. pen: D. de uſufr. l. n. ceſſ. 8. §. fin. D. de peric. & comm. rei vend. l. in venditionem 8. in pr. D. de reb. autor. jud.* quidni igitur & reditum temporalem ex eo conſtituere? Perpetuum autem nequit *arg. nemo plus 45. de R. I.* Aretin. *ad l. qui Romæ 122. §. fin. D. de V. O.* Ar. Pinel. *ad l. 1. C. de bon. mat. part. 3. n. 38.* Emphyteuta quoque in emphyteuſi, inſcio domino, abſque ejus tamen damno ullo *l. ſanè 17. D. de pignorat. act.* cenſum conſtituere poteſt, quoniam & fundum emphyteuticum pignori dare *l. tutor 16. §. fin. D. de pignor. act. l. lex vectigali 31. D. de pignor.* & uſumfructum in fundo vectigali alteri concedere poteſt *l. 1. in pr. verſ. & par. D. quib. mod. uſuf. vel uſ. am.* ac emphyteuſin legare, & donare poteſt *l. ſi domus 71. §. fin. D. de legat. 1. l. in conventionibus 219. D. de V. S. l. 1. C. de fund. patrimon. lib. 11.* quamvis non vendere, niſi domino ſuo. *l. fin. C. de jur. emphyt.* Bl. *ad d. l. 1. pr.* Jaſ. *ad l. fin. quæſt. 4. & 8. C. de jur. emphyt.* Jul. Clar. *§. Emphyteuſis. q. 20.* Bon. *art. 28.* Diſſ. Lud Rom. *ſingul. 626.* Vaſallus quoque ſine domini conſenſu beneficio valet imponere cenſum. Nam & ſervitutem poteſt imponere rei feudali *2. F. t. 8. verſ. quid ergo, ſi precio.* & beneficium alteri in feudum concedere, modò iiſdem conditionibus, quibus ipſe habet *2. F. t. 55. §. fin. verſ. illud.* Clar *§. Feudum. q. 37.* Bon. *art. 2.* Petr. Foller. *d. t. Cenſus. n. 11. & ſeqq. pag. 334. & ſeq.* ne tamen fundum feudalem pro cenſu hypothecæ ſubjiciat *2. F. t. 8. in fin. d. t. 55. verſ. hab. to.* nec quicquam in domini damnum faciat. Superficiarius etiam, quamdiu jus ſuum durat, abſque detrimento domini ſoli *d. l. ſanè 17. D. de pignor. act.* in ſuperficie reditum conſtituere poteſt, quia & eandem hypothecæ ſubjicere *l. etiam ſuperficies 15. D. qui potior. in pign. l. tutor. 16. §. fin. D. de pignor. act. l. grege 13. §. & in ſuperficiarius 3. D. de pignor.* eidemque ſervitutem imponere poteſt *l. ſervitutes 3. D. de ſervitut. l. 1. § ult. D. de ſuperfic.* Gaudebitne verò eodem jure Uſuarius? Non: hic enim jus planè nequit alienare *§. 1. I. de uſu & habit. l. ſed neq; 8. D. eod. tit.* atque ſic nec pignorare, nec obligare *arg. l. fin. C. de reb. alien. non alien.* Fac. huc *verb. d. §. 1. ad uſum quotidianum &c.* E. pro ſuâ tantùm neceſſitate. Vid. P. Foller. *d. cap. Cenſus.* Paul. Buſ. *lib. 1. c. 6.* Felic. de Sol. *lib. 2. c. 3. n. 21. & cap. 4. per tot.*

XXIV. *Conſtitueturne verò Cenſus* [illegible] *nomine ab aliis? Aliquando.*

[illegible] ob neceſſitatem evidentem [illegible] & exercendam [illegible] poſſunt, præ[illegible] decreto magiſtratus [illegible] *5. §* [illegible] *ob æs* [illegible] *rel. min. l. lex quæ* [illegible] Koller *d. c. Cenſ.* [illegible] *n. 31 & ſeqq.* Procurato[illegible] ſpeciale mandatum [illegible] *l. qui ratione 9. §.* [illegible] *D.* [illegible] *§* [illegible] *3 D.* [illegible] *peric. tut.* [illegible] *33. D.* [illegible] *vel am. poſſ.* vel li[illegible] adminiſtrationem, ſi expediat cenſus impo[illegible] commodum *d. l.* [illegible] *quâ ratione. D. de A. R. D.* [illegible] *D. de Procurat.* Anne verò etiam negocio[illegible] ſi evidentiſſima ſuadeat neceſſitas, ut [illegible]nſtet [illegible] evitari non potuiſſe facto quo[illegible]. Tam enim utiliter geruntur negotia, [illegible] ab iis requiritur *§. 1.* [illegible] *D. de neg. geſt.* Fac huc *l.* [illegible] *eſſe* [illegible] *D. de neg. geſt.*

XXV. *Conſtitui & acquiri poteſt Cenſus* [illegible] *Ut Donatione.*

[illegible] conſtitutio, & ejuſdem acquiſitio. [illegible] quibus cenſus conſtituuntur, [illegible] propterea hic conſtitutio & acquiſitio con[illegible] donationem quidem cenſum conſtitui alteri [illegible] quod unicuique res ſuas donare liberum ſit [illegible] *per traditionem 40. l. de R. D.* Car. Molin. *de* [illegible] modò res alicui donari poteſt, reſer[illegible] *C. de rer. permut.* ſed etiam a domi[illegible] donari poteſt. Summ [illegible] *q. 73.* [illegible] Menoch. [illegible] *d.* [illegible] & quidem non ſolum per donatio[illegible] ſimplicem, ſed & propter nuptias, ac mortis cauſſa,

causâ, ob eandem rationem ubique locum habentem. Martin. Nav. *ad d.c.1.cauſ.14.q.3.num.98.* Et per titulum feudi *2.F. ... 20. in pr.* Guerr.Piſ. *in prælud.feud.c.19.n.8.* quod donationis ſpecies *1.F.t.27. in pr.& 2.F.t.23.§.beneficium & §.ſeq.* Unde & feuda de camerâ & de cavenâ tales cenſus eſſe videntur *2.F.t.1.§.ſciendum. t.2. §.1. t.58.in pr.* Frid.Mart *c.3.n.5.* Vid. Schneidevv. *tract.feu.part.1.n... & ſeq.& part.2.n.24.* Schrad. *de feud.part.2.c.3.n.81. & ſeq.* Guil. Munneton *de juſt, feud.lib.1.c.4.* Vult. *lib.1.de feud.c.8.n.13.* Niel. *... feud. 5.th.8.lit.d.* P.Greg. *lib.6.ſyntagm.c.3 n.8.* ut & feudum ſoldatæ *2.F.t. 10.in fin.* Vid. Joh.Blanc. *epit.feud.lib.1.c.1.n.18.* Jac.de Ardiz. *ſumm. jur.feud.c.29.* Roſenth. *tr.feud.c.2.concl.75.*

XXVI. *Ultimâ voluntate.*

Titulo inſtitutionis, legati, fideicommiſſi, donationis mortis causâ *arg.l.vel negare 5.D.teſt.tut.quemad.aper.l.1. C.de SS. Eccl. l. ult.C.de fideic. Nov.1.in præf.§.1.& c.1.§.1.Nov.22.c.2. Nov. ... c. 1.* Eſtque & fuit antiquitùs inſignis modus conſtituendi cenſum per legatum. Quod valet; ſive per id teſtator purè & ſimpliciter cenſum alicui relinquit, putà, lego tibi 50. ſingulos in annos *l.c. D.de ann.legat.* Barth. Chaſſan. *in côſuetud.Burg rubr.12.de cen. §.6.& §.4.n.2.* Frid. Martin. *d.c.3.n.45.* Diſſ. Aret. *conſ.151.* Cagnol. *ad l.2. C. de pact.int.emt.& vendit.* ſive alternativè certam quantitatem, & donec ea præſtetur annuum reditum ab herede *l.ſi legatum ... §. fin.D.d.t.de ann.legat.* Poteſt enim teſtator heredem gravare, eique mandare, ut aliquid faciat, det, ſolvat; poſſuntque legata & fidei commiſſa ſub pœnâ relinqui *l.1.C.de his quæ pœn.nom. §.ult. ... de legat.* Paul.de Caſt. *ad rubr.D.de his quæ pœn.nôm.& ad l.1.C.de ſumm. Trinit.n.14.* Bl. *ad d.l.1.C.de his quæ pœn.* Alciat *lib.3.par... ult.* Tiel. Jaſ. *ad d.l.1.C.de his quæ pœn.nom.col.2.* Aretin. *conſ.151. ... verſ. ſed tamen his non obſtantibus.* Crot. *ad l.nemo poteſt 55.D.de legat. 1 ...* Nec refert, an in ejuſmodi legatis alternativis electio conferatur in arbitrium heredis, de quo Covarruv. *lib.3.var.reſo.c.1.n.ult.* an legatarij, ut hic eligat, utrum ſummam malit, an verò annuum reditum *arg.l.ſi Titio 10.D.de uſu.& uſufr.leg.l.planè 34.§.pen.D.de legat. 1. l. Lucio Titio 23. D. de legat. 2.* Poteſtque legatario inter duo vel plura optio legari *l.1.& t.t.D.de opt.vel elect.leg. § optionis ... 23. I. de*

23.*l.de legat.*Car.Molin.*de commerc.d.q.*73.*n.*487. Alciat. *d. loc.* Diff. Bu.*ad d.l.*3 §. *ſin.D.de ann.legat.& ad l.cum ſtipulati.*90.*D.d.V.O.*Bl. *ad l.cum allegas* 15.*C.de uſur.in oppo.*3.Dec.*ad d.l.*3.§.*ult.*Campeg.*de dot. part.*2.*q.*13.Menoch.*coſ.*441.*n.*26.*&ſeq.*Covarruv.*d.lib.*3.*c.*1.*n. ult.*

XXVII. Præſcriptione quoq; acquiritur; immemoriali, longiſſimâ, & etiam longâ. Sed diverſa ratione.

Per tempus immemoriale annua præſtatio cenſus uniformis veram ejuſdem juris acquiſitionem, titulumq; ſufficientem & juſtum inducit, ut vult Covarruv.*ad c.poſſeſſor malæfidei* 2. *de R. J. in 6. part.*2.*relect.*§.4.*n.*4. cum hæc præſcriptio vim conſtituti tituli & privilegij habeat *l.hoc jure* 3.§.*ductus aquæ* 4.*D.de aq.cotid. & æſt.c.*1.*de præſcript.in* 6. & legis *l.*1.§.*ult.l.*2.*in pr.* §.1. & §.*idem Labeo.*7.*D.de aq.& aq. pluv.arc.* in his etiam, quæ principi ſunt reſervata *c.ſuper quibusdam* 26.§.*præterea.extr.de V.S.*Bl.*ad l.cum de in rem verſ.*6.*D.de uſur.*Panorm.*conſ.*94.*lib.*1.Felin.*ad c.cauſa* 7.*extr.de præſcript. col.* 3 *verſ.ſed adverte.*Jaſ.*ad l. ſi certis annis* 28. *C. de pact.col.ult.* Corn.*conſ.*74.*n.*1.*vol.*3.*& conſ.*184.*n.*3.*vol.*10.Schurff.*conſ.*39.*num.*14. *cent.*3.Mynſing. *cent.*1.*obſerv.*30.Diff.Buſ.*d.lib.*1.*c. ult.* Per longiſſimum quoque tempus, ſeu 30.vel 40.annos facta ſolutio annua redituum veram juris hujus acquiſitionem, & tituli præſumtionem infert *arg.l.ſicut* 3.*& l.cum notiſſimi* 7.*C. de præſcript.* 30.*vel* 40. *ann.c.*1.*de præſcript.in* 6. Car. Molinæ. *de commerc.quæſt.*20.*& in conſuetud. Pariſ.t.*1. §.7.*n.*21.Covarruv.*d.loc.n.*3. Adverſus Eccleſias & loca religioſa præſcriptio 40.annorum, non autem 30.currit *Nov.*111.*& Nov.*131.*c.*6.*c.volumus* 2.*c.ult.cauſ.*16.*q.*4. *c. de quartâ* 4. *c. ad aures* 6.*c.illud* 8.*extr.de præſcript.c.ſi qui* 2. *de præſcr. in* 6. ſublata per *d.Nov* 111. centenariâ *è l.ut inter.*23.*C.de SS.Eccleſ.& Nov.*9. quam tamen Irner.*in Auth.quas actiones.C.de SS.Eccleſ.&* pontificij communiter adverſus Romanam Eccleſiam non eſſe ſublatam volunt; a quibus ob *d.Nov.*111.*d.Nov.*131.*d. c. volumus.* & Julian. *Epit.d.Nov.*131. non immeritò diſcedunt Ar.Pinel.*ad auth.niſi tricennale.C.de bon.mat.n.*57.Cujac.*lib.*5.*obſerv.c.*5.Conr.Ritterſhuſ.*in expoſ.method. Novell.part.*11.*c.*1.*n.*18.*& ſeqq.& de differ. Jur.Civil.& Can.lib.*4.*c.*14. pontifices poſteriores centenariam præſcriptionem Romanæ

[illegible]
[illegible]
[illegible]
[illegible]
[illegible] Zobel. [illegible]
[illegible]
[illegible]
ſimbec [illegible] Hieron. Panalbin [illegible]
[illegible]
[illegible]
[illegible]
& ad [illegible] Dan. Muller. [illegible]
Panſchmann. *[illegible] 4.* Heigl. [illegible]
de Iure communi etiam præſcribitur [illegible]
eſt decennium inter præſentes; ſi [illegible]
e ſufficiente & probato titulo ac bona [illegible]
fuerint percepta [illegible]
[illegible]
lo per hoc [illegible]
[illegible]
[illegible] Covarruu. [illegible]
Frideric. Martin. [illegible]
quitatum [illegible]
cauſa [illegible]
& ratione [illegible]
bari [illegible]
20. [illegible] Alexand. [illegible]
[illegible]
lin. d. q. 20 Covarruu. [illegible]
nere communem eſſe. [illegible]
enim dicta allegatio tituli [illegible]
[illegible]
[illegible]
[illegible]
[illegible] Gabriel. [illegible]
[illegible]

[illegible] d [illegible]

XXIIX. *Conſtituitur, & acquiritur etiam judicis ſententiâ.*

Cum & ita juſtus ſit titulus ad dominium transferendum *l. 1. in pr. D. de publ. in rem act.* Buſ. *d. lib. 1. q. 1. c. 11. n. 8.* Et nō modò ſi de reditu contentio eſt; competat nimirum is cuidam, an non: ſed cujus quando alias de debito lis eſt, poterit judex ſententiam ea proferre, ut debitor ſummam, vel annuum cenſum, donec iſta ſolvatur, præſtet. Poteſt enim judex non modò in ſortem principalem, ſed etiam in id, quod intereſt creditoris, condemnationem facere *l. 1. C. de ſent. quæ pro eo quod inter. profer.* Et cui licet quod plus, eidem quoque quod minus *c. cui licet 53. de R. J. in 6.* Cōdemnare autem in ipſam ſummam ſimpliciter, quod judici cōpetit, plus eſt, quàm alternativè in ſummam vel in cenſum, donec ſumma præſtetur. Frideric. Martin. *d. c. 3. num. 12. & ſeqq.* Diſſ. Felic. de Sol. *d. lib. 2. c. 5. n. 11. & ſeqq.* Neque diſtinguendum videtur inter res numero, pondere ac menſurâ conſtantes, & alias, quaſi pro his ſolis alternativa condemnatio fieri poſſit, pro illis autem nequeat. Siquidem eadem ratio ubique ſubeſt, & *d. l. 1.* planè reclamat *ibi. in omnibus rebus, quæ certam habent quantitatem vel naturam, veluti in venditionibus & locationibus &c.* Diſſ. Navarr. *ad d. c. 1. cauſ. 14. q. 3.*

XXIX. *Dote, transactione, permutatione, in ſolutum datione, ſtipulatione &c.*

Per dotem quoque cenſus introducitur. Nulla enim eſt ratio, cur pater filiam elocans pro dote quotannis penſionem dare nequeat. Sot. *d. loc.* Vid. Covarruv. *lib. 3. var. reſol. c. 1. n. 3. verſ. octavo.* Per Transactionem etiam, ſi lis rei aut perſonæ intentata, ita pacificè cōponatur, ut certum quippiam annuatim ſolvatur alteri, vel è re, vel à perſonâ. Talis enim transactio nuſpiam eſt prohibita. E. cenſus per eam conſtitutus validus erit *arg. l. ſi ex. cers 10. l. cauſas 16. C. de transact.* Et aliàs pœna transactioni adjecta eſt præſtanda *l. pacto convento 15. l. qui fidem 16. D. de transact. l. 2. l. promiſſis 37. C. eod. t.* Cravett. *conſ. 217. n. 4.* Men. *lib. 2. præſ. 107. n. 9.* Buſ.

D 2 d. lib. 1

[illegible] *n.4*. Diſſ. Felic. de Sol. *d. loc.* [illegible] Permutatione quoque, ut ſi quis rem mobilem vel immobilem ità alienet, ut [illegible] quid annuū in frumento, pecuniâ &c. recipiat. Etenim ſic quoq; res pro re datur, & cū [illegible] hinc ſatis fit [illegible] me[illegible] *d. q. 73. conc. 2.* [illegible] *d. loc. n. 1. & ſeqq.* ubi [illegible] quentiſſimè hoc ſeculo prædia ita alienari, ut [illegible] quantitas annua pro iis præſtetur. Diſſ. Felic. de Sol. [illegible] *n. 1*[illegible]*. §. ſed* [illegible]. Per dationem in ſolutum quoque, ſi [illegible], quod alicui debebatur [illegible] pretium [illegible] & pro eodem annua aliqua penſio ſolvatur, ad modum juſti pretii [illegible] venditionis, cui in ſolutum datio ſimilis eſt [illegible] *D. de* [illegible] *a*[illegible]*. l. ult. D. quibus ex cauſ. in poſſ. eat. l.* [illegible] *D. de dol. mal. & met.* [illegible] *prædiorum* [illegible] 217, *n. 4.* Bertran. *conſ. 9*[illegible]*. n. 7. lib. 3.* Paul. Pariſ. [illegible] 4. Redoan. *de reb. eccl. alien. Rubr. de conſ.* [illegible] ubi & addit, hanc cauſam redituum conſtituendorum [illegible] tempore frequentiſſimam eſſe Diſſ. Felic. de Sol. [illegible] lationem etiam; cū omnis res, quæ [illegible] in ſtipulatum deduci poſſit *pr. I. de* [illegible] *ſeqq.* Et per omnes alias cauſas cenſus [illegible] poteſt, quibus rei traditione vel quaſi [illegible] [illegible]ium acquiritur.

XXX. Inſignis quoq; titulus Cenſus eſt emtio-venditio. Quæ omni jure licita eſt; ſi [illegible] *adſit precium, & abſint conditiones iniquæ.*

Hanc enim Juri Divino non adverſam eſſe [illegible] *Levit. c. 25. n. 14. & ſeqq.* ubi aſſeritur fructus futuros [illegible] annum Jubilæum uſq;. Si omnes fructus [illegible] poſſunt, multò magis certa fructuum pars vel quantitas [illegible] *c. 8. n. 12.* E jure Civili quoque eadem probatur per [illegible] *D. ad l. Falcid. Nov. 72. c. 7. verſ.* [illegible] *Nov.* [illegible] 14 *in pr. C.* [illegible] Conſtitutionibus Imperii quoque [illegible] conſirmata eſt. Referunt [illegible] *Ordn. Francof. Anno* 157[illegible] [illegible]

[illegible]

con [illegible] hic [illegible] in De jure [illegible] [illegible] approbatur *d. cerua.* [illegible] *de* [illegible] [illegible] *conſ.* [illegible] *2. part. 3.* Neque [illegible] pro ju- [illegible]. Omnes ſiquidem res [illegible] emi & vendi [illegible] quas cuique habere, poſſidere, [illegible] eſt [illegible] *§. 2. D. de* [illegible] *emt.* At reditus habere, [illegible] que ju- [illegible] perſequi licitum eſt *l. 1. D. de ann. legat.* ac [illegible] poteſt dari [illegible] quare cuius tale ſit illicitum. *Buſ.* [illegible] *n. 34.* [illegible] adſunt [illegible] requiſita eſſentialia, ibi quoque [illegible] [illegible] At cum pecunia [illegible], ſive fructu- [illegible] conſtituitur, & alteri venditur, omnia [illegible] requiſita adſunt [illegible], jus videlicet perci- [illegible] reditum, precium in pecunia, & conſenſus ex [illegible] parte. Quæ tria ad [illegible] eſſentialiter requiruntur [illegible] *l. 1. D. de contrah. emt. l. 1. D. de rer. permut.* Frideric [illegible] Eſt [illegible] emtio cenſuum perpetuorum, & ad tempus conſtitutorum. Innocent. Panorm. [illegible] Bero. Hoſtienſ. *ad d.* [illegible] Oldrad. *conſ. 2. n. 7.* Rip. *lib. 1. reſponſ. cap. 19.* [illegible] Anton. Teſaur. *deciſ. 154.* Sum- [illegible] Franc. [illegible] *lib. 7. ſelect. interpret. c. 1.* [illegible] Gail. [illegible] *& ſeq.* Frid. Mart. *in* [illegible] *de cenſ & d. c. 3.* [illegible] *& ſeq.* Covarr. [illegible] *n. 2. & ſeq.* ubi & hanc emtio- [illegible] frequentiſſimam eſſe teſtatur. P. [illegible] [illegible] hujus contractus ſecuritatem & [illegible] eſſe, ut temerarium ſit de illa dubitare. [illegible] *q. 22.* Bernh. [illegible] *aetern.* [illegible] Salice, & Gregor. de Arim. *in auth.* [illegible] *C. de uſur.* Ho- [illegible] parte Tiraq. *de retr.* [illegible] *§.* [illegible] *gl. 6. n. 16* qui ta- [illegible], veluti in rem judicatam tranſiiſſe, licitas eſſe [illegible].

XXXI. Quodnam autem juſtum precium erit? & hoc cenſu redimibili illud lege Imperii eſt definitum.

De jure Juſtinian. unius annui juſtum precium eſſe 50 vo- [illegible] per *Nov. 120. c. 9.* Alii 35 per *Nov.* [illegible] (ubi [illegible]

vulgatis exemplaribus, & apud Julianum legitur, *intra viginti quinq. annos*) Alij 25. per *l. ſi heres 3. §. fin. D. ad l. Falcid. & Nov.* [illegible] *c. 2.* Alij 20. per *Nov.* [illegible] *c. 3. §. 1. verſ. ſi verò aliquis.* Alij 15. per *l. ſi* [illegible] *gentum 35. §. fin. autem donator. C. de donat.* Nonnulli de jur. Canon. 10. per *dd. extravag. 1. & 2 de emt. & vend.* Alij volunt 6. annuos juſtè emi poſſe 100. Alij id generaliter non definitum; proinde tantùm ad ſingularum provinciarum conſuetudines reſpiciendum eſſe autumant. Alij rei exiſtimationem, fructuumque rationem attendendam eſſe putant. Vid. Covarruv. *l.* [illegible] *ſol. cap. 7. 9. & 10.* Fachin. *lib. 2. controv. c. 43.* Tiraq. *de retr. lign.* [illegible] *gl. 6. n. 17 & ſeqq.* Petr. Follet. *in prax. cen. cap.* [illegible] *pag. 452. num.* [illegible] *& ſeqq.* Car. Molin. *de commerc. q. 5. n. 117.* Frideric. Martin. *cap.* [illegible] *num. 1. & ſeqq. per tot.* Caſpar. Roderic. *de ann. &* [illegible] *& 6.* In Imperio precium cenſus redimibilis eſt certò definitum: 20. videlicet pro 1. annuo, & 100. pro 5. annuis. *Conſtit.* [illegible] *VVormat. Ann. 1495.* Von dem gemeinen Pfennig. *tit.* Wie fünff vnd zwantzig *&c.* Ref. gut. Pol. *Auguſt, Ann. 1530. & 15*[illegible] & Pol. Ordnung. *Francof. Ann. 1577.* vom Wuch. Contract. §. Vnd nach dem. Et iſtud precium non tantùm in pecuniarijs penſionibus eſt definitum; ſed etiam in fructuariis, ut ij ad rationem [illegible] rum reducantur; ita, ut non plus in frumento, vino & [illegible] ter, quàm quod in pecuniâ permiſſum eſt. Pol. Ordn. *Ann.* [illegible] *tit. 19.* Von verkauffen *&c. §.* Hierauff ſetzen. Eſt autem ſecunda ratio reductionis cenſuum iſtorum ad annos communes vel mediocres, non ad fertiliſſimos; quando viliſſimo precio fructus cōparari poſſunt *d. t. 19. & §. ibi.* Deſſelben gleichen hiebevor in guten wolfeylen Jahren/da Wein vnd Getreyde in guten kauff vnnd wolfeyl geweſen *&c.* & pro ratione & conditione eorum temporum, quibus emtiones redituum fructuariorum factæ ſunt, perpendēdū, an eæ juſtæ vel injuſtæ tū fuerint *l. ſi voluntate 8. in fin. C. de* [illegible] *vend. dd. extravag. com. 1. & 2. utrobiq., tum ſecundum tempora qualitatem.* Binsfeld. *ad d. c. §. extr. de uſur. q. 15. concl. 2.* Mart. *d. c. 3* [illegible] *& ſeqq.* Poteſt autem precium iſtud conſtitutionibus Imperialibus definitum jure municipali, & conſuetudine minui vel extendi *arg. l. de quibus 32. D. de ll. & c. fin. extr. de conſuet.* Mart. [illegible] modò conſuetudo non ſit rationi contraria, & iniqua *l. 2. C. que ſit long.*

[illegible] *l. 3. ſin. [illegible]* Unde refert Bal. [illegible] [illegible] definitionem illam paucis [illegible] [illegible] pluribus [illegible] consuetudinem [illegible] eandem probare [illegible] [illegible] difficilis, Menoch. *lib. 2. [illegible]* [illegible] ipsum precium, vel [illegible] [illegible] non fuerat obſervatum [illegible] con- [illegible] tantum [illegible] Hoc videtur [illegible] [illegible] ad legitimas [illegible] *[illegible]* [illegible] [illegible] [illegible] *[illegible] 37 [illegible]* [illegible] *26. [illegible] ſi quis [illegible]* [illegible] *ſi quid [illegible] C. de [illegible]* [illegible] *6. extr. de uſur.* [illegible] *Gail. lib. 2. obſ. [illegible] obſ. [illegible] ult.* utrobique in Came- [illegible] ita obſervari teſtatur, Dñs Guid. Pap. *conſ.* 1*o*. Felic. de [illegible]

XXII. *Quodnam autem cæterarum cen- ſus ſpecierum juſtum erit precium? Ad morem loci & probatorum hominum æſtimationem reſpici- endum erit.*

Cum dictæ Constitutiones Imper. non loquantur de cen- ſu [illegible] temporali ſive certi ſive incerti tem- poris, horum precium exinde incertum quoad definitionem generalem [illegible]. Proinde in eorum omnium precio juſto [illegible] attendenda videtur conſuetudo cujuſque loci, & [illegible] bonorum & prudentium hominum judicium; cum contractus ad loci conſuetudinem conformentur *l. ſi fun- [illegible]* *l. ſemper in ſtipulationibus* 34. *D. de R. J.* eaque ha- [illegible] juſta precia, quæ in civitate obtinent *l. 2. in pr. C. ut nem.* [illegible] ac communis hominum æſtimatio cujuslibet rei juſtum precium definire ſoleat *l. ſi ſervum* 33. *D. ad l. Aquil. l.*

ad d. c. 6. extr. de uſur. quæſt. 14. concl. 8. Frideric. Martin. *d. c. 5. n. 15. & ſeqq.* ubi & *num. 17.* notat, in Germaniâ hoc tempore, paucos cenſus irredimibiles conſtitui, conſtitutos autem communiter emtos eſſe ad rationem 1. pro 25. juxta *d. l. ſi heres 3. §. ultim. D. ad L. Falcid.* Quod precium injuſtum non eſt; cariùs enim eos emi debere, quàm redimibiles, apparet inde; quòd res ab omni onere libera majoris precij ſit, quàm oneribus ſubjecta; pactumque in venditoris favorem adjectum pars precij habeatur *l. fundi partem 79. D. de contrah. emt.* Hucq; facit illud, quod *Levit. c. 25. verſ. 14. & ſeqq.* habetur. De cenſu temporali ad tempus vitæ unius hominis vel plurium idem, videlicet ad morem loci reſpiciendum eſſe, aſſerunt Covarruv. *d. c. 9. n. 7.* Felic. de Sol. *lib. 2. c. 1. n. 21.* Gail. *d. lib. 2. obſerv. 8. n. 5.* ubi & *n. 1.* refert, emtionē annuorum redituum juſtam cenſeri, ſi 1. annuus flor. ematur 10. vel 12. ad tempus vitæ unius perſonæ, mediocris ætatis, ut 30. annorum. Reditus quoque ad certum tempus conſtituti precium ex uſu loci definiunt Mich. de Palat. *in prax. Theol. lib. 4. c. 7. pag. [illegible]. verſ. 2. reſpondebu.* Felic. de Sol. *d. c. 1. n. 22.* Licèt Buſ. *d. lib. 1. c. 10. n. 2 & ſeqq.* putet, id generaliter definiri poſſe, quod bis æquatur reditibus collectis, ut quando 1. ann. flor. ad 24. annos emitur 12. Si de more & communi precio in loco quodam nihil appareat, res hæc arbitrio judicis, & viri incorrupti committenda videtur, qui precium juſtum è conſideratione ipſius rei, perſonarum & circumſtantiarum determinet. Carol. Molin. *de commerc. [illegible] 71.* Covarr. *c. 9. n. 7.* Diſſ. variè Dd. ut videre eſt apud Covarr. *d. lib. 3. c. 7. 9. & 10.* Fel. de Sol. *d. lib. 2. c. 1.* Frid. Mart. *d. c. 5.* Caſp. Roderic. *tr. de ann. & menſtr. redit. q. 5. & 6.* P. Buſ. *d. lib. 1. c. 9. & 10.* Fachin. *lib. 2. cont. c. 43.*

XXXIII. Contractui huic varia ſolent adjici Pacta conditionalia. Quorum quædam ſunt licita.

Eaque nec contractum vitiare, neque vitiari vulgò dicuntur. E quorum numerò ſunt 1. Pactum de non redimendo, ut cenſus queat redimi. Quod enim juris eſt de toto, id quoq; de parte *l. quæ de totâ 76. D. de R. V.* Licita autem eſt prædij alicujus

omniumq;

omniumq; ejuſdem jurium emtio irredimibilis. E. Ac emphyteuſis, feudum, ſervitutes & alia jura utilia emi poſſunt irrevocabiliter. Imò è naturâ contractus emtionis eſt, ut res vendita irrevocabiliter penes emtorem maneat. Hujuſque cenſus irredimibilis emtio favorabilior videtur, quàm redimibilis, cum hæc mutuo aliquantiſper affinis videatur, illa non. Conr. Summerh. *de contract. q. 82.* Covarr. *d. lib. 3. reſ. c. 7. n. 2 & c. 10. n.* 5. Lud. Molin. *d. diſp. 3*[illegible] *& 359. concl. 9.* Non obſtantibus *dd. Conſtit. Imp.* quæ tantum de uſitatiſſimis cenſibus, qui redimibiles ſunt, loquuntur, de irredimibilibus autem nihil diſponunt; neque *dd. extrav. ſæ.* ad caſus propoſitos directis. Diſſ. Binsfeld. *ad d. c. 6. extr. de uſur. q. 14. concl. 1.* 2. Pactum de retrovendendo, in favorem venditoris appoſitum, per *dd. conſtitut. & dd. extravag.* Fac. huc *Levit. d. c. 25. verſ. 10. & ſeqq. l. 2. C. de pact. int. emt. & vend.* 3. De obligatione bonorum, quæ cenſitor diſtrahere poſſit, non præſtitâ pecuniâ tempore conſtituto §. 1. *J. quib. alien. lic. l. ſi convenit 4. l. ſi neceſſitas 8. §. ſi annua 3. D. de pignor. act. l. pactum 4. C. eod. tit. l. ult. §. 1. C. de jur. dom. impetr.* Binsfeld. *ad d. c. 6. q. 12. concl. 12.* cum & pignus vendi poſſit absque pacto, debitore non ſolvente *d. l. 4. D. de pignor. act. d. l. ult. C. de jur. dom. tt. D. & C. de diſtr. pign.* Et non modò pactum iſtud valebit pro intermiſſis reditibus, ſed etiam pro recuperando precio, tanquam eo, quod intereſt *arg. l. de emto 11. §. idem ait 9. D. de act. emt.* Myñſing. *cent. 1. obſ. 53. n. ult.* Summerh. *de contr. q. 86.* Binsfeld. *d. q. 12. concl.* 15. 4. Ut bonis intereuntibus, ſuper quibus reditus eſt conſtitutus, venditor nihilominus penſionem ſolvat *d. extravag. 1. verſ. ſed ad hoc. ibi. inviti nequaquam.* E. volentes; multò magis proinde tum obligatio perſonalis ad cenſum præſtandū valebit. Siquc ſeparatim conſtitui poſſunt cenſus perſonales & reales, quidni etiam conjunctim? Summerh. *q. 83. concl. 4.* Lud.

XXXIV. *Quædam ſunt illicita.*

Quæ vel contractum dicuntur vitiare; vel [illegible]. Et [illegible] tem vitiant vel nullum faciunt contractum, quæ contra eſſentiam ipſius contractus inita ſunt, *l. in, cvir de* [illegible] *per ſervum* 4 *§.* 1. [illegible] *D. de us.* [illegible]. Qualia ſunt quæ vel contra eſſentiam emtionis ſiunt, vel in ſpecie contra eſſentiam cenſualis emtionis; unde nullus eſſe [illegible] ditus e re plane ſterili præſtari deberet &c. Quædam [illegible] vitiantur; quæ dicuntur I. Cti [illegible] naturalia [illegible] jus eſſe. Qualia ſunt 1. Pactum, ut non ſoluto [illegible] tempore res pro cenſu obligata cadat in commiſſum, & [illegible] emtori *l. fin. C. de pact. pign.* nimia enim hoc eſſet pœna, quæ conventionibus adjici non permittitur. Vid. [illegible] *Q. lib. 2. cent. 3. caſ. 2*[illegible]*0. n. 37.* Summeth. [illegible] 2. Ut is cenſum non ſolvens obligetur ad obſtagium, [illegible] ſtung. Obſtagia enim jure noviſſimo Imperii ſunt [illegible] D. *Anm.* 1577. *d. t.* 17. Von Wucherl. Contracten §. [illegible] licèt antiquitùs eſſent permiſſa. [illegible] *eod. tit. §. ult.* In Saxonia quoque eadem ſunt prohibita [illegible] *tit.* 22. §. Wir wollen auch die [illegible] *execut. part.* 1. *c.* [illegible] *n.* 92. 3. Ut venditor ferat onera [illegible] cenſus, vel emtionis emtori ſuſtinenda; tale enim [illegible] iniquum eſt, & meritò refertur inter pacta illicita, [illegible] in *dd. conſt. Imp.* Nav. *ad d. c.* [illegible] *n.* 13 [illegible]. Hinc [illegible] emtioni cenſus adjecta pro vitioſo & non adjecto [illegible] Ref. gut. Pol. *Ann.* 154[illegible]. [illegible] Ord. *Ann.* 1577. [illegible] len wir daſſelbige und alle andere [illegible] pacta [illegible] Wucherlich und unzuläſſig geacht &c.

XXXV. *Cenſus rectè conſtitutus finitur quoque varijs modis. Utpote Redemtione.*

Si videlicet eſt cenſus redimibilis, & premium à debitore [illegible] cenſito fuerit refuſum emtori [illegible] Quid verò [illegible] ſi pretium nolit recipere cenſuſt [illegible] illius realis oblatio, an verò requiratur [illegible] hanc quoque requiri videtur [illegible]

cap.cum 19. *C.de uſur.l.ſi à te* 7. *C.de pact.int. emt. & vend.l.nec creditores* 30. *C.de pignorat. act.l.* 2. *in fin. C. de jur. emphyt.* Gl. *ad l.* 2. *C.de pact. int. emt. & vend.* Br. & Salic. *ad d.l.* 19. *C.de uſur.* Fachin. *lib.* 2. *controv. c.* 42. Buſ. *lib.* 2. *c.* 11. *n.* 8. *& ſeqq.* Diſſ. Bl. & Alberic. *ad d.l.* 19. Car. Molin. *de commerc. q.* 39. *n.* 206. Boêr. *deciſ.* 124. *n.* 27. Poterit ne autem adverſus facultatem hanc reluendi præſcriptio currere? Negativa verior videtur *l.* 2. *C.de pact.int.emt. & vend.l.quod ſi nolit* 31. *§. ſi quid ita veneris* 22. *D.de ædil.edict.* Ac rebus meræ facultatis & voluntatis & ſic nullo uſu ad ſuſtentationem indigentibus præſcribi nequit *l.viam.* 2. *D.de via publ. & itin.l.hæc autem* 6. *D. de ſervit.urb. præd.* Fac huc *l. ſuus quoq;* 4. *§. ult. D.de hered. inſt. l. fin. D de condit. inſtit.* Et nulla hic poteſt locum obtinere quaſi poſſeſſio immunitatis ab obligatione ad revendēdū; quia novit emtor, competere venditori & cenſito facultatem redimendi, & ita eū in quaſi poſſeſſione juris redimendi eſſe. Abſque poſſeſſione autem vel quaſi nulla currit præſcriptio *l. ſine* 28. *l. juſto* 44. *§. ult. D.de uſucap. c. ſine poſſeſſione* 3. *de R. J. in* 6. Eſſetque in malâ fide; cum qua non habet locum præſcriptio *cap.vigilanti* 5. *c. ſi diligenti* 17. *cap.ult.extr. de præſcr. cap. poſſeſſor.* 2 *de R. I. in* 6. Fab. de Mont. *de emt. & vend. q.* 3. 7. *quæſt. princip.* Chaſſan. *conſ.* 11. *& in conſuet.* Burg. *rubr.* 5. §. 1. *num.* 10. *& ſeqq.* Zoanett. *ad d.l.* 2. *C. de pact. inter emt. & vend. n.* 33. *& ſeqq.* Gail. *lib.* 2. *obſ.* 18. *n.* 4. *& ſeqq.* Mynſing. *cent.* 1. *obſ.* 16. qui duo teſtantur, hanc ſententiam in Camerâ eſſe receptam. Speckh. *cent.* 2. *cl.* 2. *q.* 12. Virgil. Pingiz. *quæſt. Saxon.* 41. Quæ & in Saxoniâ peculiari conſtitutione Electorali approbata eſt *conſt.* 1 *part.* 2. ubi Daniel. Moller. & Reinh. Roſ. Diſſ. Balb. *de præſcript.* 4. *part.* 5. *part. princip. q.* 3. Covarruv. *lib.* 1. *reſol. c.* 9. Tiraq. *de retr. convent. §.* 1. *gl.* 2. *n.* 2. *& n.* 25. & alij multi ibidem relati.

XXXVI. Rei, è qua cenſus debetur, interi-

[illegible] *l.* [illegible] *34.* § [illegible] *Atilicinus 35. D. de* [illegible] *l.* [illegible] *§. ſi quis propter* [illegible] *D.* [illegible] *pign.* [illegible] *vers. ſed ad hoc.* & *d. extrav. 2.* [illegible] re extincta, nō amplius obligata eſt ad ſolvendum cenſum [illegible] Molin. *de contr.* [illegible] *. 313.* & S[illegible] [illegible] Bo[illegible] *d.* [illegible] *. 11.* [illegible] *. 25.* [illegible] *d. lib. 3.* [illegible] *c.* [illegible] *n.* [illegible] fuerit ceſſio [illegible] & res pro eo pignori ſubjectas [illegible] re intereunte, [illegible] exſtinguitur *l. pignus 9. C.* [illegible] *l.* [illegible] *C. de* [illegible] lin. *d.* [illegible] *. 383.*

XXXVII. *Temporis adjecti decurſu, &c.*

Si videlicet cenſus ſit temporalis, & vel ad certum tempus, puta 20. 30. annos conſtitutus, vel ad vitam alicujus [illegible] enim caſu termino adveniente jus cenſus finitur. [illegible] modis finitur; utpote ſi [illegible] jus percipiendi cenſum [illegible] ſtoti, vel alias eid. remiſerit [illegible].

XXXIIX. *Anne etiam præſcriptione?*

Communis videtur negativa quam [illegible] *C. de præſcr. 30. vel 40. ann.* [illegible] *D.* [illegible] *tus 6. ext. de relig. domib.* propugnāt poſt Martin. [illegible] *406. in* [illegible] Gr[illegible] Per. [illegible] *Pedem. 114.* Andr. [illegible] *13.* Myn[illegible] merā hanc aliquoties ſecutam aſſerunt. [illegible] Coler. *ad c.* [illegible] *15. extr. de præſcript.* [illegible] *part. 2. concl. practicabil. 4.* Affirmativam [illegible] & præſcribatur tempore longiſſimo [illegible] nam aſſerit Par[illegible] *lib.* [illegible] per *l. eos 26. in pr. C. de uſur. l. ſi quis* [illegible] *vel 40. ann.* [illegible] *de quart.* [illegible] *4. extr. de præſcr.* [illegible] *ſeruiſſe* [illegible] *D. de uſur.* [illegible] *5. C.* [illegible] *§.* [illegible] *§.* [illegible] [illegible] nec aſſerovē præſcriptio [illegible]

[illegible] B [illegible] *l.* [illegible]
[illegible] *ſi* [illegible] *D. de* [illegible]
[illegible] Schneidew. *ad tit. I. de* [illegible]
[illegible] *ſeq. vol. 1.* Zanger. *de except. part.* [illegible] *n. 188.* [illegible]
[illegible] *& ſeqq.* ac Paul. [illegible]
[illegible] de generali conſuetudine Franconiæ [illegible]
[illegible] Quam etiam expreſſ
[illegible] ubi Dan. Mol.
[illegible] *C. de pręſ.* [illegible] magis convenire.

XXXIX. Competunt autem ex hoc jure cenſuali cenſitori actiones perſonales.

[illegible] quidem fuerit comparatum, nulla [illegible] adhuc penſio ſoluta, competit actio e titulo quo jus cen- [illegible] Sicut enim is, qui ſtipulatione, emtione, [illegible] quoddam ſervitutis ſibi comparavit *§. fin. I. de* [illegible] ſi uſus ſervitutis non permittatur, perſonalem actionem [illegible] habet; ſic quoque cui jus annu- [illegible] promiſſum eſt titulo quodam, ex eodem [illegible] perſonalem adverſus promittentem habet, ut [illegible] ; cum permiſſio uſus [illegible] *§.* [illegible] *D. de act. emt. l.* [illegible] *D. de ſervitut.* Et ad [illegible] Joh. Bab. *ad §.* [illegible] Gomez *tom. 2 var. reſol.* [illegible] *n. 22.* Et iſtam [illegible] vel alio contractu habet etiam cenſitor poſt [illegible] ſi plures debeantur: ſiquidem tum [illegible] ad quod cenſuus ſe obligavit, præſtitum

tur. Vid. Don *ad. loc.* & *lib. 19. c. 1.* Eâ quoque competunt cenſiti. Et quidem ratione poſſeſſionis adipiſcendæ competit quidem *Interdictum Salvianum*. Si videlicet titulum quidem habeat cenſitor, penſionem autem nondum perceperit, tum è Salviano interdicto, prædij cenſualis oppignorati, ejusque fructuum, poſſeſſionem adipiſci poteſt, ad effectum ut fructus prædij cenſualis retineat, donec ſibi de penſionibus ſatisfactum fuerit. Chaſſan. *in conſuet. Burg. d. rubr. 11. §. 6. n. 11.* Lud. [illegible]
Cum hoc utile competat cuilibet creditori, cui debitoris bona vel tacitè, vel expreſsè ſunt oppignorata *l. 1. C. de prec. & Salv. interd.* non modò contra debitorem, ſed quemlibet poſſeſſorem. Br. *ad l. 1. D. de Salvian. interd. n. 2.* & *ad l. 1. C. de* [illegible] Hugel. *de retin. ad §. item Serviana 7. de action. 9.* VVeſenbec. *in parat. D. de Salv. interd. §. ult.* Schneidevv. *ad §. ſequens diviſ. 2. J. de interd.* Ratione poſſeſſionis retinendæ uti poteſt interdicto *Uti poſſidetis*, ad retinendam quaſi poſſeſſionem juris adverſus turbantem *c. quereſam 24. extr. de elect. c. ult. de reſtit. ſpoliat. in 6.* Nam & hoc interdictum ad jura & res quaſi immobiles per interpretationem extenditur *l. ſi duo 3. §. 2. l. 4. D. uti poſſ. l. ſicut 8. §.* [illegible] *D. ſi ſerv. vindic. c. licet 9. extr. de præb.* Menoch. *de recup.* [illegible]
Recuperandæ quoque poſſeſſionis interdictum *Unde vi* habet contra ſpoliantem. Jnnoc. & Abb. *ad c. pervenit 5. extr.* [illegible] Menoch. *de recuper. poſſ. rem. 1. n. 81. & ſeqq.* Joh. Fab. *ad §.* [illegible] *interd.* Gail. *lib. 2. obſ. 25. n. 1.* Hocque non modò [illegible] contra eum, qui primò penſiones ſolvere degavit, ſed etiam contra ſucceſſorem *arg. l. 1. §. fin. l. ſi plures 9. D. de vi & vi arm.* & quidem non modò univerſalem, ſeu heredem. Menoch. [illegible] *rem. 1. n. 157.* Jac. Venent. *de anu. præſtat. q. 17.* ſed etiam particularem, ſi penſiones ſolvere recuſet; quoniam eo ipſo, quo [illegible] ſpoliat. Venent. *q. 19.* Menoch. *d. loc. n. 80.* Gold. Pap. *deciſ.* [illegible]
Quod tamen ad ſucceſſorem cenſitoris non [illegible], ut eodem remedio uti poſſit, cum non videatur quaſi poſſidere, cui nullæ unquam penſiones fuerunt præſtitæ. Venent. *d. loc.* [illegible] Menoch. *d. rem. 1. n. 78.*

XLI. Actiones etiam reales [illegible]

Ut Actio Confeſſoria, ſi jus cenſus fuerit acquiſitum per quaſi traditionem, dum videlicet aliquot annuæ præſtationes fuerunt [illegible]. Per hanc enim actionem jus aſſeritur & vindicant [illegible] quaſi poſſeſſionem juris, ejusdemve [illegible]. [illegible] habens jus ſervitutum, decimarum &c. ſi in quaſi poſſeſſione illius juris turbetur, confeſſoriam actionem ad jus [illegible] intendere poteſt. *§. æque 2. J. de action. l. 1. D ſi* [illegible] *D. ſi* [illegible] *24. extr. de decim.* Poteſtque hæc cum actione perſonali, puta ex emto ad annuas penſiones præſtandas cumulari, cum actiones plures ad diverſa tendentes ſimul inſtitui queant, [illegible] Schneidevvin. *ad §.* [illegible] *de act. n. 3. 10. & ſeqq.* Jus autem cenſus & præſtatio annua ſunt diverſa. Et venditor tenetur præſtare poſſeſſionem ſique aliquid ejus ratione deſit, agitur ex emto, ut tradatur, vel quaſi tradatur pars rei nondum tradita *l. ſi in qua-* [illegible] *D. de act. emt.* Bl. *ad l. 1 D. de peric. & comm. rei vend. n.* [illegible] Mynſing. *cent. 3. obſ. 53.* Si enim adhuc aliquid deeſt implemento contractus, recte agitur primævâ actione, licèt etiam pro majori parte impletus ſit. *Zaſ. ad l. ſtipulatio* [illegible] *§. 1. D. de V. O. & ad l. 3. §* [illegible] *D. de acq. vel am. poſſ.* Poteſtque confeſſoria hæc etiam jungi cum interdicto Uti poſſidetis, licet non ita cum hac vindicatio rei corporalis miſceri queat *d. §. æque 2. Inſt. de act. l.* [illegible] *6. §. 1. D. ſi ſerv. vindic.* Abb. *ad c.* [illegible] *5. & c. cum dilecti* [illegible] *extr. de cauſ. poſſeſſ. & propriet.* [illegible] *ad l.* [illegible] *12. §. 1. D. de acquir. vel am. poſſ.* [illegible]. Jungiturque etiam cum interdicto Unde vi [illegible] cum poſſeſſorio recuperatorio dici poteſt [illegible] *c. cum dilectus 6. extr. d. t. de cauſ. poſſ.* Br. *d. loc. n. 22.* Unde Cl. *ad c.* [illegible] *15. extr. de judic.* & Schneidevv. *ad d. §. æque 2.*

ſi jus cenſus tantùm debeatur è contractu, nullâ adhuc penſione præſtitâ: tum enim perſonalis [illegible] actio competit. Vid. [illegible] *q.* 9. *num.* 97. Datur & confeſſoria non ſolùm pro cenſu reali, ſed etiam perſonali, quoniam ubique fit perſecutio juris. Et non ſolùm contra cenſitum, ſed etiam contra alium impedientem. Actionis enim hujus ea natura eſt, ut contra omnes, qui jus alienum quaſi poſſidentes, vel ab ejus uſu impediunt, detur. Schneidev. ad §. [illegible] *de act.* Ac de cenſu merè reali adverſus prædii cenſualis poſſeſſorem datur nullâ conſtituentis, aut ejus heredum excuſſione factâ: quia onera, & ſervitutes & jura fundis inhærentia tranſeunt ad omnem fundi cujuſdam ſervientis poſſeſſorem. Et quidem tum is ſolus, nullo autem modo conſtituens, aut ejus heredes confeſſoriâ tenentur. Paul. de Caſtr. *conſ.* 2[illegible]. *lib.* 2. Menoch. [illegible] *n.* 23. Sicuti enim vaſallus & emphyteuta, ſi prædia non poſſideant, ad officia & penſiones non obligantur, ſic nec conſtituens, amiſſâ re, ſuper quâ cenſus conſtitutus fuit. Datur & cenſitori *Quaſi Serviana, ſeu hypothecaria*, quâ ad rei pro penſione obligatæ penſionem acquirendam agitur, ut res jure pignoris obligata retineatur, donec annua penſio præſtetur, aut alienetur, ſi penſiones non præſtantur, nec pignus redimitur. [illegible] *de act. l. ſi convent.* 4. *D. de pign. act.* Et hæc quoque cum actione perſonali ad ſolvendas præſtationes præteriti temporis cumulari poteſt. *Nov.* 4. *cap.* 2. *verſ. ultra principales*, ob rationem ſupra allatam. Myns. *cent.* 1. *obſ.* 58. Ac datur non ſolùm contra cenſitum, ſed etiam alium prædii cenſualis hypothecæ ſubjecti poſſeſſorem. Covarruv. *d. lib.* 3. *reſol. c.* 7. *n.* 6. Venen. *q.* 31. Quæritur autem, an hic poſſeſſor conventus exceptionem non factæ excuſſionis opponere poſſit? Si res tantùm fuerit oppignorata, tum poterit opponere; quia cenſitus, ejuſque heredes [illegible] priùs ſunt conveniendi, iis excuſſis demum alius hypothecæ poſſeſſor quaſi Servianâ eſt conveniendus, *l.* [illegible] *pr. D. de jur. fiſc. auth. hoc ſi debitor. C. de pignor. Nov.* 4. [illegible]

Sub th. 9. *lin.* 6. & 7. *leg.* In ſervitute perſonali non præſtatur annua penſio, quæ in cenſu maximè &c.

SOLI DEO GLORIA